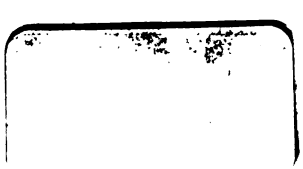

SPECULATION *and* GAMBLING

In Options, Futures and Stocks

IN

ILLINOIS

By JAMES C. McMATH
Chicago

LAW AND PROCEDURE
HISTORY, ECONOMICS, LAW AND BROKERS
ILLINOIS LAWS

Cases, References to Legal Periodicals, etc.
In the Appendix

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PREFACE.

This book is published with the hope and expectation that it will be of service to lawyers in the preparation and trial of cases in which the validity or invalidity of transactions in grain "futures" and stocks are in question. There are many references in the index—which is placed in the front of the book—not to be found elsewhere therein. The Illinois laws against gambling, the Illinois cases and a great number of annotations and references to legal periodicals, are in the appendix. These are, of course, for the use of lawyers and Courts. My investigations of the subject have covered a long period of time, but this book has been dictated and printed in a very short time, from my notes and from a collection of books purchased during the past few years. To go into the subject fully would require much time and the publication of a very large volume, so I prefer to give to the profession a reference book at small cost, and covering the subject from many standpoints. It is not my expectation that it will do more, so far as the public is concerned, than somewhat lessen the number of people who are committing financial suicide through the evils of speculation in commodities and corporate stocks, many of whom do not know that they are gambling and think they are trading on the Board of Trade when they are not. It is only the members of the Board of Trade who do the trading on the Board or in the pit. Outsiders are not allowed to trade. The first deal they make is with a broker and the con-

tract with him is almost always an implied contract. The next contract that is made is between brokers in the pit, so there are two contracts, one of which may be illegal. Speculation is legal, gambling or wagering is not. When all the facts are known, the line between speculation and gambling can be drawn without much difficulty.

In conclusion, I think it has been very truly said that a book is only to be esteemed, like a mirror, for the truth and accuracy with which its object is reflected. Some people, however, do not want either the truth, or an application of the law.

"No man 'ere felt the halter draw
With good opinion of the law."

[There are many citations in the index not cited elsewhere herein.]

INDEX AND REFERENCES.

Actions:

To recover money wrongfully taken by employes and others and lost in speculation or gambling may, in many instances, and under many circumstances, be maintained by the employer or others and this, whether the transactions were gambling transactions, or not. Page on Contracts, (1st Ed.) Sec. 520, 42 Ill. App. 287, 48 C. C. A., 726, 109 Fed. 926, 88 Fed. 868, 167 Pac. 202, 74 So. Rep. 610. See notice.

By losers in gambling transactions may be maintained if the loser sues within six months. 99 Ill. App. 171, and actions by others (if the loser does not sue within six months) to recover the penalty of treble the amount lost in gambling may be maintained. 181 Ill. 199, and the motive prompting the person to sue cannot be questioned. 96 Ill. App. 593. Actions to subject the premises of landlords to the payment of judgments obtained for money alleged to have been lost in a gambling house have been maintained. 184 Ill. App. 261. Criminal prosecutions for gambling in grain have also been successful. 186 Ill. 43.

By others, than the losers, to recover treble the amount lost under Sec. 132 of the Illinois Crim. Code may be maintained. See cases in the Appendix, Nos. 47, 55, 60, 61, 66, 69, 75, 97, 104.

Must be prosecuted in the County where the gambling was done, 103 Ill. App. 330, and the place where the office is kept, and the orders are given, is

the place where the offense is committed. 209 Ill. 528. See Limitations, Statute of.

A case that was well tried, before an able Judge, by able counsel, was that of *Tenney* v. *Foote,* 4 Ill. App. 594. The decision in that case makes the clear distinction between an "option" such as Sec. 130 Ill. Crim. Code prohibited, (a privilege) and a "future" —(sometimes called an option)—which is legal when it is a *bona fide* contract of purchase or sale, but which was illegal at Common Law (because contrary to public policy) when there was no intention of making a *bona fide* contract of purchase and sale and only an intention to settle on "differences." The English case of *Grizewood* v. *Blane,* E. C. L. Reports 538 is cited and explained. Prior to the act of 1874 (Sec. 130 Ill. Crim. Code) it was lawful in Illinois to contract to have or give an option to sell or buy, at a future time, grain or other commodity. Such contracts were neither void nor voidable at the Common Law, but the statute made them void in Illinois. *Schneider* v. *Turner,* 130 Ill. 28. They were, however, illegal at common law if it was not the intention to accept or deliver the commodity, and consequently illegal in Illinois. To get a clear understanding of the law relating to the subject of gambling in grain or other commodity, the reader should first understand what the word "option" means. See "Option." He should then understand what the word "futures" means. See "Futures." He should then understand that options are not dealt in during market hours, but that futures are. He should understand that dealing in futures is lawful when there is a *bona fide* intention to accept or deliver the grain or other commodity

and that when there is no such intention it is unlawful and that it is gambling, and that dealing in options when there is no such intention is also gambling.

Accounts:

In a broker's office are kept in a journal where the trades are entered and these accounts are posted to a customer's ledger. There is also a general ledger and a cash book. The customer's account shows his losses and gains, and the order given by him to buy or sell grain is first entered on a slip of paper or an order blank by the Order Clerk, and it is from these slips or order blanks, and from the memoranda that the entries are made in the books. The Bookkeeper's knowledge is obtained from the memoranda furnished him by others and books kept in this manner are not admissible in evidence until the man who furnishes the slips and memoranda first testifies to the correctness of the items, or there must be other proof of such fact to entitle the books to admission in evidence. 204 Ill. 616. For what may be regarded as a settlement of accounts, see *Pynchon* v. *Day,* 118 Ill. 10, and for the application of payments on account where some of the items are illegal, see *McCormick* v. *Nichols,* 19 Ill. App. 134. In a suit for balance due upon a series of transactions, some of which were gambling contracts and void under the statute, where the payments made amount to more than all the items that were legal or recoverable, the defendants are entitled to have their payments applied, first, to the charges that were legitimate, and to repudiate so much of the balance as remains unpaid. *Id.*

Accounts are not evidence of collateral facts. Jones Ev. (pocket Ed.) Sec. 574, and for a statement of the law as to when a party cannot be compelled to produce books of account or give evidence that will have a tendency to accuse him of a crime, or expose him to a penalty or forfeiture. See p. 15. See also Books of Account.

Accounts Stated:

If an account is stated, the defendant is not precluded from disputing any item, as an account stated is simply *prima facie* evidence of its correctness. 157 Ill. App. 132. And whether, in a suit at law, there was an account stated between the parties, is a mixed question of law and fact. 264 Ill. 198, and if any part of the consideration entering into an account stated is illegal, there can be no recovery of any part of the claim under the count of "account stated." 156 Ill. App. 244. An action on account stated in wagering transactions cannot be sustained. Dewey on Futures, p. 60 and cases cited.

Annotations:

Case Notes, references to legal periodicals, other writings, and publications relating to the subject of gambling in futures and stocks. See Appendix, pp. 67-69, inc. For the statutes of Illinois against gambling, also see Appendix, pp. 59-65, inc., and for a list of 125 Ill. Reported cases, where grain and stock gambling was the issue, see Appendix pp. 65-67, inc.

Appeal and Error, 45.

Arbitraging:

Is buying in one market at a price, and selling in another market at a better price, the object being to net the difference that may exist between the buying and selling prices in the two markets. Or, the operation may be reversed by selling first in one market and buying in another. The arbitrageur can often make a small gain by the difference between the prices in London and in New York.

Brokers:

Relation between a broker and customer. See *Flagg* v. *Baldwin,* 38 N. J. Equity 219, 229, and p. 54 herein. Rules determining whether or not a broker or commission merchant was expressly or impliedly cognizant of the illegality of the transaction and, therefore, whether or not he can recover for his commissions or advances, 20 Cyc. 963. Distinction between a broker and a commission merchant, Dewey on "Futures," 232. City ordinance requiring brokers to obtain a license. See Chap. 15, Chicago Code, 1911. He cannot recover commissions if unlicensed, 156 Ill. App. 483, but may recover for advances made when the transactions are legal, 182 Ill. App. 350. When a broker cannot recover commissions and advances, *Irwin* v. *Williar,* 110 U. S. 499. A broker or commission man who receives money or property to be used in the payment of losses incurred in transactions in grain which are gambling transactions, under Sec. 130, Crim. Code, is a "winner," within the meaning of Sec. 132, and subject to the penalty imposed thereby, 181 Ill. 199. In *Soby* v. *People,* 134 Ill. 66, a case in which Soby was indicted for keeping a bucket shop, it was said that it was not necessary to show the *intention* of the

keeper of the office or place of business to bring the transaction within the prohibition of the statute. "So the keeper of such office or place cannot shield himself from criminal responsibility behind the fact that he made no inquiry of his customers. The keeper must know that the transactions at his office are not gambling, or he must have just reason to believe that the buying or selling is not within the intended prohibition of the statute. If a broker has actual or constructive notice that it is the intention of his customer not to take or deliver any grain, but that the customer's intention is to settle on "differences" and he (the broker) assents to it, he cannot recover any commissions or reimbursements for losses. *Jamieson* v. *Wallace,* 60 Ill. App. 618. Whether he has constructive notice that such is the case, and whether he assented or not, will be determined in each case by the facts and circumstances. Circumstantial evidence may be sufficient to uphold a judgment against him. See *Bartlett* v. *Slusher,* 215 Ill. 348. A broker knows when a customer is "scalping." And for his right to recover commissions and advances made in furthering wagering contracts, see 11 L. R. A. (n. s.) 575. See "Duty."

Bet:

The word "bet" and "wager" are synonymous, terms, and are applied both to the contract of betting and wagering and to the thing or sum bet or wagered. 11 Ind. 16, "If one of the parties may gain, but cannot lose, and the other may lose, but cannot gain, and there must be either a gain by the one, or a loss by the other, according to the happening of the contingency, it is as much a bet or wager as if the

parties had shared equally the chances of gain or loss." 15 Grat. (Va.) 661. "It cannot be pretended that a bet, under the form of a sale, by which one party sells for its precise value an article to be paid for only in the event of the election resulting in a particular way, is not as fully within the mischief intended to be remedied, as any bet whatever can be." *Id.* See "Wager."

Betting & Gaming:

See Illinois Cyc. Dig., Vol. 1, p. 935, as to criminal prosecutions and recovery back of money lost; also, Vol. 5, p. 260, "Gambling Contracts"; also 3 Enc. Ev., 60, as to circumstantial evidence, and Vol. 7, p. 580 as to intent; also see 16 Enc. Pl. & Pr., 229, as to "Penalties and Penal Actions." See also Cranston's "Instructions to Juries," gen. index, "Gaming" and "Board of Trade."

Board of Trade:

Patrons of, classified by the Hughes Committee, p. 15. Rules and regulations of, and by whom they are enforced, p. 52. Rule against trading in differences, Sec. 8, Rule 4, p. 52. The gambling in grain is done in offices of the brokers and not on the Board of Trade, p. 4. Rules and regulations of the Board when not admissible as evidence under the issue of gambling, 168 Ill. 504. The Board of Trade custom—substitution of contracts or clearances is legal. *Oldershaw* v. *Knowles*, 6 Ill. App. 325. Outsiders—the public—do not trade on the Board. It is the brokers who do the trading there. The members of the Board have a Court of their own and lawyers

are not allowed therein. The outsider may be admitted to the gallery but usually is not allowed on the floor. The Board of Trade and the Open Board of Trade on Sherman street are different organizations. Anyone can go on the floor of the Open Board and give his order to a broker member of the board, but he cannot do that on the other board. Only small lots are traded in on the Open Board. The Board of Trade of Chicago is a corporation created by a special act of the legislature and a certificate of membership in the Board of Trade of the City of Chicago, is not property, in any such sense as to render it liable to be subjected to the payment of the debts of the holder by legal proceedings. 107 Ill. 349.

Books of Account:

See a treatise on the power of the Courts of common law to compel the production of documents for inspection, by Charles Edward Pollock, of the Inner Temple, 1853. The production of books and papers in the Federal Courts is regulated by Sec. 724, Rev. Stats., U. S., and as to compulsory production of books, see *Nelson* v. *U. S.*, 201 U. S. 92, *Lester* v. *People,* 150 Ill. 408, *The Dennison Cotton Mill Co.* v. *Shermerhorn,* 257 Ill. 128, *Manning* v. *Securities Co.,* 242 Ill. 584.

A party's books of account, as evidence in his own favor, is the subject of an extensive note in 52 L. R. A. 545, and what is provable by books of account is in another extensive note in the same book. 689-723. Account books are not evidence of collateral facts. Jones Ev. (pocket Ed.), Sec. 574, and if the party who made the entries in a book has no personal

knowledge of their correctness, but made them from memoranda furnished by another, the latter must testify to the correctness of the items, or there must be other proof of such fact to entitle the books to admission in evidence. 204 Ill. 616.

A broker, or any other person has a right to avail himself of his constitutional privilege and refuse to furnish evidence which will incriminate him; but to entitle him to this privilege of silence, the Court must see from the circumstances and the nature of the required evidence, that there is reasonable ground to apprehend danger to the witness if he furnishes the evidence. 242 Ill. 584. From the foregoing, it will be seen how far a broker can make use of his books in his own favor, and how he can avoid allowing a loser to have the benefit of them, when the latter is suing to recover his losses, or how he can prevent a third person in an action to recover treble the amount lost from obtaining his books as evidence by claiming his privilege. The subject of "Books of Account" and "Accounts Stated" are important in disguised gambling transactions. A failure, after legal notice, to produce books of account which may furnish legal evidence authorizes the introduction of secondary evidence of their contents. 2 Enc. Ev. 692. It is not easy in all cases for a broker to prove his losses, irrespective of the gaming defense. Nor is it easy for a loser, or another in all cases to prove his case. In this class of cases the difficulty is not so much with the law, as it is with the lack of evidence, and here is where the value of circumstantial evidence is apparent. Gaming can be proved by the attending circumstances. 215 Ill. 348. See Accounts and Books of Account.

Burden of Proof:

In Illinois the party asserting that the transactions were gambling transactions has the burden of proof. 241 Ill. 215, and he must prove it by a clear preponderance of evidence, 181 Ill. App. 517, but in Wisconsin it has been held that when a party makes contracts for future delivery, the burden is on him to show that they were made in good faith. *Barnard* v. *Backhaus,* 52 Wis. 593. This case was cited with approval in *Beveridge* v. *Hewitt* in 8 Ill. App. 467. If the Wisconsin rule was in force in Illinois it would probably stop considerable gambling. See evidence.

Blue Sky Laws:

Restricting the sale of corporate securities are in force in thirty-seven states.

Bucket Shops:

See Illinois Bucket Shop Act in the Appendix, p. 62, definition of, p. 27, and the law in regard thereto, 17 Cent. Law J., 361. Also see "Goldbricks of Speculation." There is not, in practical effect, any difference between a bucket shop and a place where gambling in grain or produce is permitted. In *Weare Commission Co.* v. *People,* 209 Ill. 528, the Court said: "The Act of 1887 prohibiting gambling in grain or produce was intended to suppress all places where gambling in grain or produce is permitted, whether in bucket shops or in offices maintained by members of the Chicago Board of Trade." The Bucket Shop Act and Sec. 130 Crim. Code must be construed *in pari materia,* p. 27 and 177 Ill. 234. Bucket Shops do not have the sign of "Bucket Shop" on the window or door, but there are many

Customer:

See Duty of broker to furnish statement."

Criminal Prosecutions:

The punishment for a violation of Sec. 130 of the Ills. Crim. Code is a fine of not less than $10 or more than $1,000, or confinement in the County jail not exceeding one year, or both.

Conflict of Laws:

As to the law that governs the validity of a contract, see 23 Harvard Law Review, 194, 260.

Contracts:

For decisions of the United States Supreme Court on "Gambling Contracts and Grain Futures," see Enc. U. S. Supreme Court Reports, Vol. 6, pages 537-543; also the heading herein—United States Supreme Court cases.

Closed the same day considered as indicating intention to wager. Dewey on "Futures," 183.

One is between the broker and his customer, the other is between brokers in the pit and when is the first one gambling. See Intent.

The number of contracts for future delivery in which actual delivery is not intended, has been said to be 95 per cent of all trades. Dewey on "Legislation Against Speculation and Gambling in the Forms of Trade." (1905) page 9.

For future delivery, page 18. Also 1 Am. St. Rep. 752 Extensive Note as to their validity, etc.

With broker may be implied, page 39.

Commissions and Advances:

When not recoverable. See *Whiteside* v. *Hunt,* 97 Ind. 191, a leading case. 49 Am. Rep. 441. Also see 1 Am. St. Rep. 764, N.

Compromises:

No compromise by the parties of differences in respect to an illegal contract can purge it of illegality and produce a valid claim on which a recovery may be had. 15 Cent. Law J., 332. *Everingham* v. *Meighan.* 55 Wis. 354.

Courts:

Duty of to charge grand jury as to violation of Bucket Shop Act. See statute so providing.

Change of Venue:

Sec. 1, Chap. 146. Ill. Rev. Stats.

Classification:

And character of the various Illinois cases in gambling transactions.

Defenses:

To notes and other obligations given for gambling debts, 119 Am. State, 172 n. See also 1 Am. St. 752 Note (future delivery.)

Decisions:

Of Appellate Court not binding in any cause other than in that in which they are filed. Chap. 37, Sec. 17, Rev. Stats.

Dewey:

On Contracts for future Delivery and Commercial Wagers (1886) Baker-Voorhis & Co., N. Y.

On Legislation against speculation and gambling in the forms of trade (1905), B. V. & Co.

Definitions:

Sec. 14 A. & E. Encyc. Law, (2nd Ed.) 605, *et seq.*

Of options, pure options, "Puts and Calls," "Futures" "Straddles," "Spread Eagles," see Dewey 2627. Bucket Shop, Buyer's Option, "Ticker," "Time Bargain," etc., id., see index to Dewey. Also see Cyclopedic Law Dictionary "Gambling Contracts."

Difference:

Between gambling in stocks and in grain. 88 Fed. 868. A good statement. Also see 241 Ill. 228.

Duty:

Of broker to furnish upon demand to any customer a written statement containing the names of the parties from whom the property was bought, or to whom it was sold, the time when, the place where and the price at which the same was either bought or sold. In case the broker refuses promptly to furnish such statement, upon reasonable demand, the fact of such refusal, the statute provides, shall be *prima facie* evidence that such property was not sold or bought in a legitimate manner. Sec. 3, Bucket Shop Act of 1887.

Of City prosecutor to enforce ordinances.

Disguised Gambling:

In grain futures must necessarily be proven in most cases by circumstantial evidence.

Evidence:

As to grain gambling transactions and what Courts will take judicial notice of, page 36.

Disguised gambling in grain "futures" must necessarily in most cases be proven by circumstantial evidence. 37.

A person cannot be compelled to produce books or give evidence that will have a tendency to accuse him of crime or expose him to a penalty or forfeiture, but his bare statement is not sufficient, page 15.

Gambling in grain may be proven by circumstantial evidence. 215 Ill. 348.

The verdict of a jury is not final as to the weight of evidence. 235 Ill. 625.

In gambling transactions see MacNeil Ill. Ev., 585, 6 Enc. Ev. 166 and Jones on Ev. (pocket ed.) "Gambling."

In a suit by a broker to recover from a person for whom a purchase was made, for loss on a resale, for want of putting up a further margin, the defendant will have the right, on cross examination, to inquire when, where and in what manner the purchase was made for him, and whether the plaintiff has settled the purchase, and if so, what was paid, to show whether the mode of dealing was fair, and free from fraud and injustice or wrong to him. 101 Ill. 117.

A Bookkeeper cannot testify as to what the profits of a transaction were, but he can testify as to foot-

"Futures":

In Bouvier's Law Dictionary, 1897 Ed., futures are defined as follows: "This term has grown out of those purely speculative transactions, in which there is a nominal contract for sale for future delivery but where, in fact, none is ever intended or executed. The nominal seller does not have or expect to have the stock or merchandise he purports to sell, nor does the nominal buyer expect to receive it, or pay the price. Instead of that, a percentage or "margin" is paid, which is increased or diminished as the market rates go up or down and accounted for to the buyer. This is simply speculation and gambling, mere wagering on prices within a given time. 14 R. I. 138." This is a good statement of a wager but as a definition of futures it is a failure. Futures are contracts for future delivery and when they are *bona fide* contracts there is nothing illegal about them. A definition given in Cyclopedic Law Dictionary (1912) is placed under the head of "Gambling Contract" and is as follows: " 'Futures.' Buyers of cash products protect themselves against possible loss by selling an agreed amount for future delivery in some general market. Such contracts are called 'futures' because they do not terminate until some designated month in the future. These transactions pass from hand to hand and may be turned over hundreds and thousands of times in an active market before maturity, and this is called 'dealing in futures.' The first part of this definition is more like the definition of a 'hedge' than of a 'future.' In Dewey on 'Contracts for Future Delivery,' p. 26, a future is defined as follows: "A sale of a commodity for future delivery on the Produce Exchange is called an

'Option,' the option being merely as to the day within a given month or other limited time upon which delivery may be made or required. On the Cotton Exchange such a sale is called a 'future.' On the Stock Exchange securities sold for future delivery are called 'buyer's option' or 'seller's option,' as the case may be." Mr. Dewey cites the case of *Cunningham* v. *The National Bank of Augusta,* 71 Ga. 400, and says the Court, in defining this term, erroneously made it out a wager, so it would seem that both the Supreme Court of Rhode Island, in *King* v. *Qudnick,* 14 R. I. 138, the Supreme Court of Georgia, and the author of Bouiver's Law Dictionary have all tried to give the definition of a "future" and have failed. Mr. Dewey, at page 40 of his work, cites the leading English case of *Thacker* v. *Hardy,* in which the subject was very thoroughly examined. Those who are interested in trying to figure out the difference between "futures" and what is called a "time bargain," should read Mr. Dewey's book on this subject. See page 43 herein. Also see what the Illinois Supreme Court has said about dealing in futures and options, to be settled on differences, page 5 herein, also see dealings in futures, 20 Cyc. p. 926, 14 A. & E. Enc. of L., 2nd Ed. 604. "Futures" are contracts for future delivery of any kind of personal property. Why all the difficulty about defining futures?

Form of Contract:

In buying and selling futures is not conclusive as to the true nature of the transaction, nor indeed, should much stress be placed thereon. See 1 Am. St. Rep. 762, extensive note.

Gaming:

For Fed. cases see Fed. Rep. Dig., Vol. 2, "Gaming Contracts and Transactions." For U. S. Supreme Court cases, see "Gambling and Wagering Contracts," Dig. U. S. Supreme Court Rep., Co-ops. Ed., Vol. 2, page 1890; also, supp. 1908 to 1917, page 554, "Gaming." Also see U. S. Supreme Court cases herein.

Power of municipality as well as state to punish for gaming, 17 L. R. A., n. s., 52 n.

Desk book L. R. A., 1918, "Gaming."

Traffic in "differences" which are determined by chance is gaming within the meaning of Sec. 130, Ill. Crim. Code, 139 Ill. 456; 27 Ill. App. 556, and the loser can recover his losses.

Gambling:

Facts from which a jury may infer that the transactions are gambling transactions and not speculation, page 57. See also "Intent and Evidence," pages 55, 36 and 215 Ill. 348.

A book by James Harold Romain, 1891.

In Illinois, by George D. Smith, see Illinois Law Review, May, 1921.

"Goldbricks of Speculation," by John Hill, Jr., 542 So. Dearborn St., Chicago.

Millions of dollars lost annually in gambling in stocks and grain. Page 33 herein.

Gambling Contract:

Under this title there are more definitions of stock and grain market words and phrases in Cyclopedic

Law Dictionary, published by Callaghan & Co. (1912), than in any other.

General Assembly:

Power of, to enact *prima facie* rule of evidence for criminal cases. L. R. A., 1915, C. 717. See Legislation.

"Hedging":

If a grain buyer in North Dakota buys 100,000 bushels of wheat and does not wish to take the risk of a declining market before he can dispose of it, he sells 100,000 bushels of wheat, for delivery in some future month on the Board of Trade at Chicago, or on some other exchange, and if he loses on one transaction he makes on the other—that is one form of "hedging." It is like insurance, and is not at all illegal. Banks would probably not loan him the money to buy the wheat if he did not hedge. Farmers sometimes hedge on the wheat they are holding. Hedging is not illegal.

Intent:

It has been said that the intent with which an act is done is almost always a question of presumption arising from the nature and character of the act, and the circumstances surrounding its commission. On the other hand, it has been held that intent is never a presumption of law, being nothing more than a presumption, or rather an inference, of fact. 7 Enc. Evidence, 583. See also Vol. 2, page 60, as to circumstantial evidence which is sufficient in all cases, also see 20 Cyc. 962 as to burden of proof and presumptions, admissibility, weight and suffi-

ciency of evidence. *Intention* is the criterion, see extensive note in 1 Am. St. Rep. 760. Right of a party to a gambling contract to testify as to his intent, 23 L. R. A. N. S. 398. He may so testify.

The intention that may make a transaction a gambling transaction may be the intent of the broker and customer without reference to what may be done in the pit on the Board of Trade. See 59 Ill. App. 448.

The question of intent is between broker and customer; the purpose or understanding as to others is immaterial. 40 Ill. App. 155, 163. 24 Ill. App. 453.

May be established by implication. 20 Ill. App. 76; 8 Ill. App. 467, 483. See Index to Dewey on "Contracts for Future Delivery and Commercial Wagers."

See as to the intent of both parties and what parties are meant—whether customer and broker, or customer and the man with whom the broker deals on the Board—201 Ill. App. 251; 40 Ill. App. 155, 163; 24 Ill. App. 453; *Jamieson* v. *Wallace,* 167 Ill. 388, 399, 60 Ill. App. 618; and for a full treatment of the subject, see "Speculation on the Stock and Produce Exchanges of the U. S." by Henry Crosby Emery, Ph. D., Columbia University. He has collected and cited a great many cases on this subject.

The intent may be proven by circumstances. 215 Ill. 348.

Inferences:

As to the character of the transaction arising from the fact that they were on "margin." 22 L. R. A., n. s., 174.

Margins:

Money or collaterals deposited with a broker to protect trades, usually for future delivery. Brokers usually require from the customer about 10 cents per bushel to be deposited as margins and if the fluctuations of the market consume it, they call for more margins. Margins are to secure the broker against loss.

Dealing in stocks on margins, as it is called, is fraught with much evil. It encourages speculation and induces many to engage in it who would not otherwise have the requisite means. In that way many people and business generally suffer more or less; but it is said to be an evil that the existing laws do not reach. It has been held, however, in Pennsylvania and New Jersey that such contracts are wagers, the only amount of money involved being the margins. The Pennsylvania cases have been much criticised, but they were followed in New Jersey and the District of Columbia. See p. 54 herein.

Manipulation:

Making a market, page 30.
Market value of stocks, evidence of, page 30.

Money:

Loaned to speculate cannot be recovered. 143 Ill. App. 151.

But a loan made after the losses have been incurred can be recovered. 99 Ill. App. 235.

There is no money in writing a *$3.00* law book after more than *three years*—more or less—of investigation and more than *three weeks*—day and

night—in dictating the manuscript for the printer and reading the proof, etc. To this add the cost of printing, binding, and selling. Where is the profit? It is, that one *may* have done something worth while for others.

Notice:

Brokers must take notice of what would put a prudent man on inquiry, 35.

Whatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led, and every unusual circumstance is a ground of suspicion and prescribes inquiry. *Kirby* v. *Judy,* 286 Ill. 200. See also 277 Ill. 629; 145 Ill. 383; 260 Ill. 70; 270 Ill. 42; 203 Ill. 144. See also Actions, Par. 1.

Options:

The word "option," as used in the statute of Illinois, prohibiting option sales and contracts, means a mere choice, right or privilege of selling or buying; and it is the privilege of selling or buying at a future time any commodity, which the statute was intended to prohibit, as contradistinguished from an actual sale or purchase with the intention of delivering and accepting the commodity specified. This is the definition given by Judge McAllister, in *Tenney* v. *Foote,* 4 Ill. App. 594. It is doubtful if there has ever been written in Illinois a better decision on "options" than the one above referred to. In *Pierce* v. *Foote,* 113 Ill. 228, the Court defined an "option" as follows: "An 'option' is what is

called in the language of the dealers 'puts' and 'calls.' A 'put' is defined to be the 'privilege of delivering or not delivering' the thing sold, and a 'call' is defined to be the 'privilege of calling for or not calling for' the thing bought. 'Optional contracts,' in this sense, are usually settled by adjusting market values, as the party having the 'option' may elect. It is merely a mode adopted for speculating in differences in market values of grain or other commodities. It is in this sense the term 'option' is used in the statute." When a man buys five thousand bushels of May wheat in March, he buys it for delivery in May and that is called a "future" and sometimes it is called a May "option." That purchase, if it is a *bona fide* purchase, is just as legitimate as the purchase of any other kind of property for future delivery, but if a man buys a "put" or a "call" after the close of market hours, good for the next day, he does not buy any grain, he merely buys a *privilege* and that privilege is to exercise the option, or not, as he pleases, on the following day. Millions of these privileges that are bought and sold are never exercised, principally because they are not very often of any value the next day. It is trading in privileges of this character that, it is claimed, was legalized by the amendment of Sec. 130, Ill. Crim. Code in 1913. Now, when is what I have first described as a *bona fide* purchase of a "future" illegal and what makes it illegal? This can well be answered in the language of Judge McAllister in the *Tenney case, supra,* and he quoted from one of the leading English cases on the subject—that of *Grizewood* v. *Blane,* 11 C. B. 73, E. C. L. Reps., 538.

In that case suit was brought upon a contract for the sale of shares of stock. The defense was that it was a gambling transaction under a British statute like that of Illinois. There was a contract in form, but the Chief Justice left it to the jury to say what was the plaintiff's intention, and what was the defendant's intention at the time of making the contract—whether either party really meant to purchase or sell the shares in question, telling them that if they did not, the contract was, in his opinion, a gambling transaction, and void. The jury found for the defendants. Of course there were circumstances in evidence tending to show their intention. On motion for a new trial before the full bench, the direction of the Chief Justice to the jury was held to be right, the Court holding that the intention of the parties that there should be no delivery of the stock, and that they should settle on differences, rendered it a gambling transaction and void.

It is only contracts for *options* which are, in their nature, gambling transactions, that are within the meaning of Sec. 130, Ill. Crim. Code, 282 Ill. 192. See also page 25 herein. See futures.

Orders:

Form of, a circumstance of little, if any weight as evidence of intention. 40 Ill. App. 164. See Form of Order.

Ordinances:

Of the City of Chicago against gaming, Chap. 30, Chicago Code, 1911.

"Outsiders":

Are the general trading public, not members of the Board of Trade or brokers. It is outsiders who pay the commissions to the brokers, and commissions are the life of the brokerage business.

Penalty:

Anyone may sue for, if the loser does not sue, within six months, page 9.

In actions for a specific penalty the amount found by the verdict, or adjudged by the Court, must be the precise penalty, neither more nor less. 16 Enc. of Pl. & Pr., 300. The severity of the penalty imposed by a statute against gambling, which authorizes a recovery by any person of treble the amount lost, furnishes no reason against its enforcement, where the language authorizing such recovery is clear. 181 Ill. 199.

Promissory Notes:

If any part of a note is for a gambling consideration the note cannot be enforced even to the extent of the lawful items. 197 Ill. 349.

Power:

Of Congress to prohibit or regulate dealing in "futures," page 1.

Of State to prohibit or regulate dealing in "futures," page 1. A state may by statute provide that all contracts for the sale of grain or other commodities or shares of the capital stock of any corporation, on margin, or to be delivered at a future

Qui Tam Actions:

See "penalties and penal actions." 16 Enc. Pl. & Pr., page 300.

Rules of Board of Trade:

Not admissible to show that the parties were not gambling. 168 Ill. App. 504. See page 52 herein.

"Ringing Up":

The Illinois Appellate Court, in 69 Ill. App. 19, held that the closing up of transactions on a Board of Trade, for the purchase and sale of grain, by setting off one trade against another—in the parlance of the Exchange—"ringing up,"—is not necessarily illegal. For a full explanation of the term, see Dewey on "Futures," 144. Also *Board of Trade of Chicago* v. *Christie Grain and Stock Co.*, 198 U. S. 236.

Speculation:

In grain "futures" or anything else in Illinois is not illegal, see page 6.

Subpoena:

Duces Tecum. 128 Am. St. 759-779. See 2 Enc. Ev., 98. 108 Ill. App. 287-300.

Description of documents. 22 Enc. Pl. & Pr., 22, 1334.

Entitled to a subpoena *duces tecum* as a matter of right. *U. S.* v. *Aaron Burr*, 25 Fed. case Number 14692d. Sec 242 Ill. 584, MacNeil's Ill. Ev., p. 314.

"Scalper":

Is one who buys and sells or sells and buys on small fluctuations of the market. Taking a small profit, or a small loss. If "scalping" is not wagering and gambling, it is difficult to say what is. See 19 Ill. App. 336.

"Stop Order"

A customer may give his broker orders to close out his deals when the market goes against him and when quotations reach a certain point, and in that case he is said to have given a "stop order."

Stocks:

Evidence of value when there is no market value. 284 Ill. 594.

"Short Selling":

The process of selling property for future delivery, in the expectation of being able to obtain the property cheaper before the maturity of the contract, or of being able to close out the contract at a profit without the actual delivery of the property. A "short seller" who sells before he buys is called a "bear," and a buyer who buys before he sells is called a "bull." Short selling is not illegal.

"Split":

A transaction, one-half at one quotation and one-half at another, *e. g.*, 53⅝—53¾.

"Spread":

A "spread" is the difference in prices as between May and July wheat, or between the price of the same future in different cities.

Irwin v. *Williar,* 110 U. S. 499, where both parties understand the contract to be a wager.

White v. *Barber,* 123 U. S. 392. Dependent upon intention of parties.

Marvin v. *Trout,* 199 U. S. 212. Holding landlord's property liable.

Wager:

For the definition of a wager, as given by the Supreme Court of Illinois. See 113 Ill. 239 and 79 Ill. 328. See page 27 herein. In *Kingsbury* v. *Kirwan,* 77 N. Y. 612, the rule is stated to be, that to render a contract for the purchase and sale of property void, as a wagering contract, it must appear to have been the *understanding* when the contract was made that the property was not to be delivered, and only the difference in the market price should be paid or received. See "Bet."

Definition of, page 27.

Wagers were not illegal at common law. See "Wager Contracts," Page on Contracts (1st Ed.)

Facts and circumstances which have been considered by the courts as indicating an intention to wager. Chap. 3, Dewey on "Contracts for Future Delivery." See also the index to Dewey. Also see as to wagering contracts for future delivery. 1 Am. St. Rep. 758 Extensive note.

"Winner":

A broker with whom another has deposited securities to cover losses sustained under a gambling contract is a "winner." 181 Ill. 199.

Words and Phrases:

In stock and grain market dealings, page 48.

Wife:

Right of, to recover money lost by husband in gambling. A. & E. Ano. cas., 1914, C. 1081, n.

"Wash Trades":

Pretended trading. Trades made on an open market by parties between whom there is a tacit or private understanding that they shall be void, done with a view to influence prices and considered a reprehensible practice.

Beard v. *Milmine et al.*, 88 Fed. Rep. 868, at page 871.

"Transactions in futures, of a purely speculative character, where nothing is put up, except for margins, are, in many essential results, different from ordinary business transactions. There is, in these transactions, no investment of money in anything tangible—in any property of supposedly equivalent value—that remains when the deal is ended. If a trader in ordinary pursuits meets misfortune, or becomes involved, something usually remains of his investment. Unless his fortune be entirely swept away or he be dishonest, there is an estate. But the speculator, investing his money in margins, invests, practically, in nothing but a turn in the market. If he meet misfortune, nothing remains. It is essentially putting his money into a turn of chance. The effect, upon the man, of transactions so radical in their money outcome has come to be notable. Transactions of this kind are, indeed, separated very nar-

rowly, if at all, from gambling, pure and simple. Both feed upon the same human propensity, and both lead to the same result. Each is an attempt, by the exercise of wit, to get what another is expected, by the want of wit, to lose. Both lead up to false notions of wealth accumulation. Both bring on the loss of mental equipose. Each fills its participant with a dangerous character of excitement—often a radical and desperate aggressiveness. No one knows these things better than the brokers themselves. They see, now and then, striking instances of moral and business degeneration under the stimulus of this excitement. They see, now and then, instances of men, pressed for margins, losing all sense of what is their own and what is another's. They witness, as well as the public, that almost unaccountable submergence of judgment and sense, under the effect of which trust funds are misappropriated, and bank funds embezzled, by those who have, at the time, no thought of not eventually making good the loss. They, as well as the public, know how quickly crime, thus secretly begun under the radiance of hope, soon expands into the daring of despair. They have seen, in nearly every community, men press eagerly towards these rainbows of fortune, only to fall quickly into disgrace and a prison. These impressive lessons are a part of the history of every considerable community. Instinctively we shudder for him who loves speculation, and can find the means for feeding that love in access to the moneys of another."

OPTIONS AND FUTURES

Grain "Futures" and Congressional Legislation.

The Tincher bill to regulate dealings in grain "futures" recently passed by the House of Representatives is a questionable exercise of congressional power. The power, or lack of power, was the subject of argument by Samuel Untermeyer and John G. Milburn during the hearings before the Committee on Banking and Currency of the United States Senate on Senate Bill 3895 (1914). Congress has the power to tax, but the power to regulate under the guise of taxation is questionable. The only other constitutional provision under which Congress may regulate trading in "futures" is that relating to post offices and post roads, and that is also questionable. Dealing in "futures" is not interstate commerce, *Ware & Leland* v. *Mobile County,* 209 U. S. 405, and the question of the validity of the congressional legislation will be, if it becomes a law, an open question.

Grain "Futures" and State Legislation.

The general assembly of the State may regulate and, possibly, may prohibit dealings in "futures." To prohibit such dealings would be a calamity, but to regulate them is a necessity. The difficulty about regulation arises principally because of the great lack of knowledge on the subject by lawyers, legisla-

tors and the public. The subject is highly technical and requires much time and labor to master it. It must be studied from the standpoint of history, political economy, law and a practical knowledge of the brokerage business.

There are several classes to be seriously affected by legislation on this subject—the producers and consumers, the grain dealers and speculators, the brokers and the gamblers and last, but not least, the thousands of people who suffer by some of the nefarious practices carried on—not so much on the Board of Trade—but in the offices of some of the brokers. These practices bring about suicides, embezzlements and bankruptcies. They wreck homes and pauperize families. They augment the number of inmates in sanitariums and penitentiaries and they destroy manhood and create the disease of gambling, from which men seldom recover. This is strong language, but it is accepted as true by hundreds of the members of the Board of Trade who are not in sympathy with these practices and who will welcome the right kind of legislation.

What Is Gambling in "Futures?"

What is meant by "futures" is where one gives an order to a broker to buy or sell grain for future delivery, *e. g.*, an order in July to buy five thousand bushels of December wheat, corn or oats. That means it will be delivered some day in December. The seller usually has the option as to what day in December he will deliver it. What is meant by gambling in grain is wagering on the fluctuations of the market price of grain between the time when it is bought or sold and the time when the trade is closed. It is similar to a bet that the market price

will go up or that it will go down. The purchase or sale of grain by parties who have no intention of receiving or delivering the grain, but intend to settle by the payment of differences between the contract price of the grain and the market price when sold is a gambling transaction and cannot be enforced by law. It is often contended that it must be the intention of both parties to the contract that there is to be no acceptance or delivery before it will be a gambling transaction; but what parties? In transactions in grain "futures" put through a broker's office, there are at least two contracts—the first is a contract between the broker and the customer and the second is a contract executed by the broker with another broker in the pit on the Board of Trade. The first contract may be express or implied and the broker may have knowledge that it is not the intention of his customer to accept or deliver any grain.

The Illinois Appellate Court has held (201 Ill. App. 251) that:

> "A pretended purchase or sale of grain made through a broker when neither the broker nor his client intends or expects that, as between them, the commodity will be delivered or received, but both of them do intend that the losses or profits on the transaction shall be determined by the difference between the market price of the grain when the deal is opened and when it is closed or, in other words, when the intention is that the client shall win or lose money on the fluctuations of the market, it is, as between them, a gambling contract and is not enforcible."

Also said that:

> "The question whether a transaction between a broker on a grain exchange and his customer

> is a gambling transaction in no wise depends upon the relation between the broker and the party with whom he deals in carrying out his customer's orders."

There are holdings of the Supreme Court of Illinois to the same effect. This is one form of gambling in grain in brokers' offices and it will be observed that the gambling is done in the broker's office and not on the Board of Trade. This form of gambling is more common than any other. It is like the pretended buying or selling of grain in a bucket shop and in effect there is no difference between a bucket shop and a broker's office when there is no intention of accepting or delivering the grain. There is bucket shopping in the offices of brokers, as well as in a bucket shop and when it is said that bucket shops have been closed, the statement may very well be challenged. There is another form of gambling in grain "futures" that was prohibited by statute in Illinois prior to 1913 when the attempt was made to legalize "puts and calls." "Privileges," "indemnities," "bids and offers," "ups and downs," "puts and calls" all mean the same thing. They are not dealt in during market hours, but they are dealt in for an hour after the close of the market each day. The method of dealing is this: One goes into a broker's office within the hour after the closing of the market and buys a bid or an offer on, say five thousand bushels of grain, good until the close of the market on the following day. If the market close on wheat that day was One Dollar per bushel he may purchase a bid at ninety-seven cents, or he may purchase an offer at One Dollar three cents. On the following day, if wheat does not go up to 1.03 and does not go down to 97, he has simply

lost what he paid for the privilege, namely, about $5.25. This is the form of gambling that can be indulged in by all classes, from the office boy to the millionaire. If, on the following day, wheat goes up to 1.05 and he exercises his privilege by selling at 1.05, he has made $100 on the deal, but it is oftener the case that he does not make anything. Hundreds of thousands of dollars are paid for these privileges that are never exercised.

On the subject of gambling in "futures" the Illinois Supreme Court has said (125 Ill. 501):

> "But leaving both sections of the statute cited entirely out of view, we are clearly of opinion that dealing in "futures" or "options," as they are commonly called, to be settled according to the fluctuations of the market, is void by the common law, for, among other reasons, it is contrary to public policy. It is not only contrary to public policy, but it is a crime—a crime against the State, a crime against the general welfare and happiness of the people, a crime against religion and morality, and a crime against all legitimate trade and business. This species of gambling has become emphatically and pre-eminently the national sin. In its proportions and extent it is immeasurable. In its pernicious and ruinous consequences it is simply appalling. Clothed with respectability and entrenched behind wealth and power, it submits to no restraint, and defies alike the laws of God and man. With despotic power it levies tribute upon all trades and professions. Its votaries and patrons are recruited from every class of society. Through its instrumentality the laws of supply and demand have been reversed, and the market is ruled by the amount of money its manipulators can bring to bear upon it. These considerations imperatively demand at the hands of the Courts of the country the faithful and rigid enforcement of the laws which have

been ordained for the suppression of this gigantic evil and blighting curse."

Speculation Is Not Illegal.

Speculation in grain "futures" has its advantages and its evils. Henry Crosby Emery, Ph. D., Columbia University, an acknowledged authority on the subject of speculation, published a few years ago a very able presentation of the business methods of the exchanges, the economic functions of speculation and the law. This, and the report of the committee of nine members appointed by Gov. Charles E. Hughes of New York (1909) on speculation in securities and commodities, may be read with interest and profit by people who desire reliable information on the subject. No well informed person will contend that there is anything wrong in buying or selling grain "futures" by people who have the ability to pay when there is a *bona fide* intention of accepting or delivering the grain, nor that there is anything wrong in hedging transactions, but what can be said of transactions when men warm the customers' chairs in brokers' offices every day "scalping" the market and closing their accounts daily? Are they betting on the figures on the blackboard, and wherein is the place different from the bucket shop—a horse race, a card game or an electrically controlled roulette wheel? "Manipulation" and "making a market" are some of the practices to be condemned. Allowing men to get up and make announcements on the Board of Trade to the detriment of bears or bulls, through which one side "skins" the other out of their money in a few minutes' time is also to be condemned. This is what has been done and it cannot be successfully denied.

It is doubtful, however, if the Board of Trade is any worse in this respect than the stock or cotton exchanges. The records of the daily transactions on the Board and on the Exchanges are available for years that are gone and there is living evidence of what caused the financial ruin of many men by the practices referred to. Some of the customers, such as bank cashiers and others, are in Joliet. Speculation, however, should not be condemned because of the practices indulged in by some of the brokers and members of the Board of Trade or of the Exchanges. Speculation in grain is just as legitimate as speculation in real estate and merchandise and millions of dollars of merchandise is continually being sold for future delivery before it is in existence. "Short selling" is no more illegal than buying and to interfere with men selling what they intend to acquire or manufacture would be to upset the business of the country.

Gambling Transactions May Be Proven By Circumstantial Evidence.

The difficulty in establishing the fact that the transactions were gambling transactions is because it is often difficult to get the evidence. The Bucket Shop Act shows how to get the facts as to what was done and the Supreme Court has said (215 Ills. 348) that "the intention or understanding of the parties may be proven by circumstances, as well as by positive proof. It is not indispensable that declarations or statements of the parties showing such intention or understanding should be proven. The intent and purpose of the parties may be established by all of the attending circumstances of the transactions."

Also said (235 Ills. 135) that:

> "To render a transaction in grain illegal it must appear that neither party intended to deliver, but have intended to settle on differences; but such intention may be established, not only by the assertions of the parties, but by all the facts and circumstances, including the nature of the transactions and the method of conducting the business."

In *Jamieson* v. *Wallace,* 60 Ill. App. 618, Judge Gary's statement of the law of gambling transactions, as between the customer and the broker, is clear and to the point:

> "Many cases in this State, where the contest has been whether the broker should recover his advances and commissions, have held that, if from all the circumstances the fair inference or conclusion be, that not only did the principal not intend to receive or deliver the property for which the broker, on the principal's account and under his order, made a contract for purchase or sale, but on the contrary intended to close the transaction, through the broker, by a counter contract for a sale or purchase, looking to the broker for the profit hoped for, and promising to indemnify the broker against loss, should there be any, *and the broker had actual or constructive notice* that such was the intention of the principal, and assented thereto, in such a case the broker can recover no commissions nor reimbursements of the losses he has paid to parties with whom he dealt for his principal, because the transactions are gambling transactions and *ex turpi causa non oritur actio.*
>
> The fact that the broker actually buys and receives, or sells and delivers, or that he makes valid contracts of purchase or sale, which he intends to, is bound to, and actually does perform—that as between himself and the other

party with whom he makes the deals, the business is perfectly legitimate and lawful—are all immaterial in controversies with his principal, if the principal did not intend to receive or deliver, but to make counter trades, speculating upon the differences, and the broker having notice of that intention, assented thereto. It is not enough that the principal so intended, if the broker had not notice of such intention; nor that in fact the transactions, though numerous, were so closed; but the number of transactions uniformly so closed, in connection with the avocation and pecuniary condition of the principal, may be evidence both of the principal's intention, and of notice to, and assent by, the broker."

Under the Illinois statute all promissory notes, contracts, agreements, etc., made or entered into in settlement of gambling transactions, by whomsoever held, are void, irrespective of when or how they were obtained. The property of landlords is liable for judgments in such cases where the landlord *knowingly* allows gambling to be carried on, in or on his premises. Judgments obtained, founded on gambling transactions, may be set aside in equity proceedings. The money of employers and others embezzled and lost in gambling transactions, under some circumstances may be recovered. The loser in gambling transactions may, within six months, sue for and recover his losses, and, if he does not sue, any other person may sue within two and one-half years and recover treble the amount lost—one-half to the County and the other half to himself or herself. The parties to gambling transactions may be prosecuted criminally, by indictment or information, and gambling places may be closed.

Did the Illinois Legislature of 1913 Legalize "Puts and Calls"?

Sec. 130 of the Illinois Criminal Code, enacted in 1874, was amended in 1913 and it has been claimed that the amendment legalized trading in "options" in grain. The Section 130 was not repealed and was copied *verbatim* with the insertion of the following words:

> "Where it is, at the time of making such contract, intended by both parties thereto that the 'option,' whenever exercised, or the contract resulting therefrom, shall be settled, not by the receipt or delivery of such property, but by the payment only of differences in prices thereof."

And the Illinois Supreme Court has recently said that:

> "It is a familiar rule, that where the legislature enacts an amendatory statute providing that a certain act shall be amended so as to read as repeated in the Amendatory Act, and no change is made in the wording of the old act, such portions of the old law as are repeated, either literally or substantially, in the new act, are to be regarded as a continuation of the old law and not the enactment of a new law on that subject."

Also said:

> "It is elementary that when an amendatory act retains in a new law the same words and phraseology that were contained in a former law which has been construed by the Courts, it must be presumed that such law was retained in the Amendatory Act in view of the judicial construction already placed upon it." (289 Ills. 242.)

The amendment merely added to the section what was illegal at Common Law.

During the Senate proceedings of 1913, a senator said:

> "This bill was down here two years ago and a number of lawyers of this Senate went into the bill very carefully, of which I was one, and I personally know that it does not legalize 'puts and calls;' that it simply legitimatizes certain legitimate transactions on the Board of Trade and we knew that when we voted for the bill."

The right conferred upon anyone by Section 132 of the Illinois Criminal Code to sue for and recover treble the value of money lost by betting in case the loser does not, within six months, sue for the same, applies to money lost in gambling in grain "options" in violation of Sec. 130 of the Code and a broker or commission man who receives money or property to be used in the payment of losses incurred in transactions in grain which are gambling transactions under Sec. 130 of the Criminal Code, is a "winner" within the meaning of Sec. 132 and subject to the penalty imposed thereby. Sec. 132 was also amended by the Act of 1913 so as to exempt from liability as a "winner" any broker executing orders on the regular Board of Trade or Stock Exchange, but this amendment was held to be unconstitutional as discriminating in favor of brokers or agents executing orders on a Board of Trade or a commercial or Stock Exchange. (273 Ills. 194.)

From the foregoing it may well be contended that Sections 130 and 132 of the Illinois Criminal Code are effective as enacted in 1874.

The Power of the City of Chicago to Enforce the Ordinance Against Gaming.

By the statute of Illinois the City Council of the City of Chicago is given power to tax, license and

regulate brokers and several ordinances have been passed in the exercise of this power. The city also has power by statute to prohibit gaming and in 1896 and 7 there were many prosecutions before police magistrates in Chicago, under the ordinance against gaming, for keeping bucket shops, and, on November 26, 1898, the police raided John Alexander's place, No. 11 Calhoun Place, Chicago, and arrested 230 men who were all booked as bucket shop operators and patrons. In 1896, under the administration of Jacob J. Kern, as State's Attorney, 281 persons were indicted as owners and employes of bucket shops, but the cases were never tried. In 1898 and 9, while ex-Governor Charles S. Deneen was State's Attorney, and Judge Albert C. Barnes was his assistant, several hundred indictments for all forms of gambling, including bucket shops, slot machines and book making, were returned and on July 23, 1898, William Rodman Hennig and ten others were convicted and fined under the Bucket Shop Act. Subsequently, Hennig was fined $500 and sentenced to nine months' imprisonment in the Ottawa, Illinois, jail by Judge Grosscup of the U. S. Court for the fraudulent use of the mails in bucket shop transactions. The statute of Illinois gives to the City Council the power to suppress gaming and gambling houses. Gaming, under the statute, making it a penal offense, is defined as a "staking on chance," where chance is the controlling factor. It has been held that by judicial evolution the common law offense of keeping a gaming house has been so broadened as to include the keeping of a bucket shop (*Anderson* v. *State*, 58 S. E. 401) and in Kentucky such a place is deemed a common gambling house

and the person owning and controlling it is guilty of keeping a disorderly house, notwithstanding the absence of a penal statute particularly applicable thereto. (*Kneffler* v. *Com.*, 22 S. W. 446.)

A horse race is a game within the meaning of the Illinois statute of 1845. (85 Ills. 491.) The right conferred by Sec. 132 Illinois Criminal Code to recover treble the amount of money lost by betting applies to money lost in gambling in grain (181 Ills. 199) and gambling in grain or corporate stocks is gaming, and the City Council of Chicago has been given power by the State to pass ordinances to prohibit it and punish the offenders. Council has also been given power "to regulate the police of the city or village and pass and enforce all necessary police ordinances." The police power of the State may, in the absence of any constitutional restrictions upon the subject, be delegated to the various municipalities throughout the State, to be exercised by them within the corporate limits and any business or occupation which endangers the public health, morals, safety or general welfare, is subject to police regulation. The provisions of the General Incorporation Act conferred on cities the power to pass such ordinances. (193 Ills. 351.)

If there is any doubt about the Chicago ordinance against gambling being applicable to wagering and gambling in brokers' offices, an ordinance can be enacted that will prohibit and punish such transactions. A policeman in Chicago can legally go into a broker's office and arrest anyone he finds there gambling in grain "futures," provided the gambling is being done in his presence, and this without

a warrant. Moreover, it is the duty of the Prosecuting Attorney of the city to enforce the ordinances of the city. In the City of Chicago, with its population of about three million people, the city authorities, as well as the State's Attorney, can put a stop to gambling in grain in brokers' offices, on the Board of Trade or on the open Board of Trade in Sherman street. The State of Illinois has laws and the City of Chicago has ordinances under which gambling in grain can be stopped if the laws are enforced, and under the Bucket Shop Act it was the declared intention to prevent, punish and prohibit within this State, the business now engaged in and conducted in places commonly known and designated as bucket shops and also to include the practice now commonly known as bucket shopping by persons, corporations, associations or co-partnerships, who ostensibly carry on the business or occupation of commission merchants or brokers in grain, provisions, petroleum, stocks and bonds, and it shall be the duty, under the Act of all the judges of the several Circuit Courts in this State and of the judges of the Criminal Court of Cook County, at every regular term of Court thereof, to charge all regularly impaneled grand juries to make due investigation and report upon all violations of the provisions of this Act. (Chap. 38, Sec. 137-d. Rev. Stats. 1917.)

On October 12, 1881, Mr. Justice Jamieson gave a charge to the grand jury in the Criminal Court of Chicago which illustrated the condition of the law of Illinois upon the subject of gambling in grain and this charge is given in full in Dos Passos on "Stock Brokers and Stock Exchanges," 2nd Ed., Vol. 1, p. 635-Note.)

The Report of the Hughes Committee and the Legislation Recommended.

One of the recommendations of the committee was that the law of New York relating to the privilege of a witness should be amended to read as follows:

> "No person shall be excused from attending and testifying, or producing any books, papers, or other documents before any Court or magistrate, upon any trial, investigation or proceeding initiated by the district attorney for a violation of any of the provisions of this chapter, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding."

In Illinois, neither a broker nor a witness is bound to answer any question, either in a court of law or equity, the answer to which will expose him to any of the consequences of penalty, fine, forfeiture or punishment, or that will have a tendency to accuse him of any crime or misdemeanor, or will expose him to any penalty or forfeiture, or which will be a link in the chain of evidence to convict him of a criminal offense (237 Ills. 173, 142 U. S. 547); but the bare statement of a party that the books which he has been ordered to turn over might tend to incriminate him is not sufficient to excuse him from obeying the order of the Court. His answer should place the matter in such shape that the Court can intelligently

determine the question from an examination of the averment of the answer, or, if necessary, from an investigation of the books, whether they would tend to incriminate him. To entitle a party to the privilege of silence, the Court must see from the circumstances of the case and nature of the evidence which he is called to give that there is reasonable ground to apprehend danger from his being compelled to answer or produce the books. (242 Ills. 584.)

If Section 132 of the Illinois Criminal Code is to have its desired effect, the General Assembly of Illinois should pass a law in line with the recommendation of the Hughes Committee, as hereinbefore set forth.

The Hughes Committee also recommended on the subject of margin trading on the New York Stock Exchange and urged upon all brokers to discourage speculation upon small margins, and upon the Exchange to use its influence, and, if necessary, its power, to prevent members from soliciting and generally accepting business on a less margin than 20%. Over trading and trading on small margins in either grain "futures" or stocks has caused the ruin of thousands of people. Should there be a law in Illinois requiring all traders in grain "futures" to deposit as margin at least one-fourth of the purchase price of the grain?

The Hughes Committee describes the patrons of the Exchange as follows:

> "The patrons of the Exchange may be divided into the following groups:
>
> (1) Investors, who personally examine the facts relating to the value of securities or act

on the advice of reputable and experienced financiers, and pay in full for what they buy.

(2) Manipulators, whose connection with corporations issuing or controlling particular securities enables them under certain circumstances to move the prices up or down, and who are thus in some degree protected from dangers encountered by other speculators.

(3) Floor traders, who keenly study the markets and the general conditions of business and acquire early information concerning the changes which affect the values of securities. From their familiarity with the technique of dealings on the Exchange, and ability to act in concert with others, and thus manipulate values, they are supposed to have special advantages over other traders.

(4) Outside operators having capital, experience and knowledge of the general condition of business. Testimony is clear as to the result which, in the long run, attends their operations; commissions and interest charges constitute a factor always working against them. Since good luck and bad luck alternate in time, the gains only stimulate these men to larger ventures, and they persist in them till a serious or ruinous loss forces them out of the "Street."

(5) Inexperienced persons, who act on interested advice, "tips," advertisements in newspapers, or circulars sent by mail, or "take flyers" in absolute ignorance, and with blind confidence in their luck. Almost without exception they eventually lose."

If men who engage in speculation in corporate stocks and grain "futures" would procure and read the full report of the Hughes committee in the Appendix of "The Stock Exchange From Within," by William C. Van Antwerp, 1914, they would be less likely to lose their money. The document covers pages from 415 to 446 of the Appendix.

The evils of speculation are all that the Supreme Court of Illinois said they were. They are a national sin and a blighting curse, and they are so recognized by the people—so much so, that in the National Democratic platform of 1912 there was a plank reading as follows:

> "We believe in encouraging the development of a modern system of agriculture and a systematic effort to improve the conditions of trade in farm products so as to benefit both the consumers and the producers. And as an efficient means to this end, we favor the enactment by Congress of legislation that will suppress the pernicious practice of gambling in agricultural products by organized exchanges or others."

In 1886 T. Henry Dewey of the New York bar published a book of 385 pages on "Contracts for Future Delivery and Commercial Wagers," including "options," "futures" and "short sales," which is recognized authority, and in 1905 he published another book of 71 pages on legislation against speculation and gambling in the forms of trade, in which he says that:

> "In a recent case the Court found that in about 95% of the "future" delivery business done on one of our most prominent Exchanges, actual delivery was not intended; and from my own observation I think that 99% would generally be a more correct estimate."

Professor Emery says:

> "If it be held that the intention of the principal to settle in every case by differences and a knowledge of this intention on the part of the broker constitute wagering, then a large number of contracts on all the important Exchanges must be declared void."

In 1884 Bissbee & Simonds, of Chicago, published

a book on the "Board of Trade and the Produce Exchange, Their History, Methods and Law." About fifty pages of this book are devoted to wagering contracts. Many of the states have laws prohibiting in one form or another what the authors thought to be the evils of speculation, but the ineffectiveness of these laws has led to determined efforts to secure federal legislation on the subject.

In 1890 Mr. Butterworth of Ohio introduced the first of the anti-option bills.

In 1892 Mr. Hatch of Missouri, Mr. Alexander of North Carolina and Mr. Brosius of Pennsylvania introduced similar bills. Many other bills have been introduced since then, but the only Congressional legislation on the subject is the "U. S. Cotton 'Futures' Act" of 1916 (Barnes Fed. Code, 1919, Secs. 5480, *et seq*) and the power given to the President of the United States with reference to market regulations by the Act of August 10, 1917, Section 10192. The history of what has been attempted and what has been done in the matter of legislation against speculation and gambling in the United States, England, France and Germany is quite fully referred to in the annals of the American Academy, in the Senate proceedings and by Professor Emery. Legislation, as it was in 1905, is given in Mr. Dewey's additional book on "Legislation Against Speculation and Gambling in the Forms of Trade," published in that year. In 1904 John Hill, Jr., of the Chicago Board of Trade published "Goldbricks of Speculation," a study of speculation and its counterfeits, and an expose of the methods of bucket shop and get rich swindles. He said it was published in

the hope that it might serve to divorce forever in the public mind legitimate speculation from gambling and swindling. In political economy there are two conflicting tendencies—one, that of *laissez faire,* accepted in the main by Adams Smith and by J. S. Mill, and forming part of the political system of English Liberals and of doctrinaire Democrats in this country. Business should be left free, so it is argued, to adjust itself. For the government to interfere in the making of contracts creates a greater evil than the evil it is intended to cure.

The other is the conflicting school which starts from an ethical or police basis. Certain business contracts, it says, are immoral and must be prohibited.

This same subject was, many years ago, made the subject of an extensive note by Dr. Francis Wharton in 11 Fed. Rep. 201. It follows the opinion and decision in the case of *Melchert* v. *The American Union Telegraph Company,* wherein it was held that contracts for the sale of property to be delivered at a future time at the plaintiff's option, when it was not the intention of the parties that the property should be delivered, either by consignment or the transfer of warehouse receipts, but that said contracts should be adjusted and settled by the payment of differences, are void. The case involved the failure of the Telegraph Company to deliver a message to a factor in Chicago, ordering him to "cover rye," and the Court held that, as the message related to an illegal contract, the Telegraph Company was not liable for failure to deliver the message. If there were no other parties to speculative transactions on

the stock, grain and cotton markets to be injured but themselves, the doctrines of Adam Smith that business should be left free might be acceptable to the majority of the people, but when speculation becomes a disease and results in ruin to the speculator, with all the attending consequences to innocent persons, will it be satisfactory to a majority of the people to refrain from legislation on the subject?

From the decisions of the U. S. Supreme Court in *Booth* v. *Ill.,* 184 U. S. 425, and *Otis* v. *Parker,* 187 U. S. 606, it would seem that it is within the power of the legislature to prohibit speculation in stocks on margin and grain for future delivery. Statutes and municipal ordinances have been sustained by that Court which compelled discontinuance of such businesses as manufacturing and selling oleomargarine, cigarettes, "futures" in grain or other commodities, stocks on margin, keeping of billiard halls and selling trading stamps. (244 U. S. 599.) A law may infringe in a degree upon the property rights of citizens, but private right must be deemed secondary to the public good.

What Law Governs?

Whether the subject matter of a contract is such as to make it valid or void or illegal, is a question often presented to the Courts for decision. The general rule is that questions of illegality are to be determined by the law of the place of performance, as far as such contracts require performance of acts alleged to be legal. This principle has been applied to contracts which in their nature are gambling, con-

tracts to pay brokers commissions on sales alleged to be gambling, and to a contract made in one state to deliver a gambling device in another. (*Page on Contracts,* Sec. 1725.) A *bona fide* contract entered into in a broker's office in New York to buy or sell wheat or grain "futures" in Chicago, Illinois, and the contract is to be performed in Illinois is a contract controlled by the laws of Illinois; but if the transaction is merely a wager under the guise of a contract on the fluctuations of the market price of grain in Chicago and is to be settled in New York on differences, it is in the nature of a bet and is controlled by the laws of New York. Much of the gambling in stocks or grain is, therefore, carried on in states other than the state where the market price is made, and must be punished, if at all, in those states and the transactions as to validity must be governed by the laws of those states. The Courts of one state do not enforce the penal or criminal laws of another and the locality of an offense is altogether dependent on the circumstances and on the peculiarity of the crime charged. In 52 *Central Law Journal,* 408, the cases are collected on the question of the locality of the offense charged in a criminal indictment. Men are many times said to be gambling on the Board of Trade in Chicago when they are not gambling in Illinois at all, but they are gambling in a broker's office in some other state on the fluctuations of the market price of grain in Chicago. A case clearly in point was that of *Lamson Bros. & Co.* v. *Bane,* 124 C. C. A. 206; 46 L. R. A. n. s. 650; but another case apparently in conflict with that decision is that of *Bendinger* v. *Central Stock and Grain Exchange of Chicago,* 48 C. C. A. 729.

There is a collection of cases on the conflict of laws as to gambling contracts following the *Bane case* in L. R. A. *supra.* The jurisdiction and venue in criminal cases is also the subject of a note in *Vol.* 9 *Am. Criminal Reports,* 406. On the question of the validity of a contract to buy or sell grain "futures" it was held in *Postal Telegraph Cable Co.* v. *Lathrop,* 33 Ill. App. 400, that orders from parties in Illinois to their agent in New York with reference to the buying or selling of commodities for future delivery were governed by the law of New York and not by the law of Illinois. There was, however, nothing in the case to indicate that actual purchase and sale was not intended.

In *Wilhite* v. *Houston,* 118 C. C. A. 542, it was held that where orders for purchases and sales on Exchanges were made through brokers, the legality of the transactions was governed by the law of the state where the Exchange was located, and in *Parker* v. *Moore,* 53 C. C. A. 369, the Court said the U. S. Courts will follow the rules laid down by the highest Courts of the state in the matter of determining whether the *lex loci contractus* or the *lex fori* governs. At common law, crimes being triable only in the county where committed, a crime committed partly in one county and partly in another was not triable in either and, therefore, could not be punished. This, however, has long been changed by statute in England and in the United States the codes and statutes of the different states usually provide that when a public offense is committed partly in one county and partly in another, either county has jurisdiction and the prosecution of such persons may be in either, under such provisions.

Where a crime is commenced in one county and consummated in another it may be prosecuted in either county. (22 Enc. Pl. and Pr. 824.)

In *Weare Commission Co.* v. *People,* 209 Ill. 528, wherein plaintiff in error was indicted for keeping a bucket shop, it was claimed that the crime, if any, was committed in Cook, instead of Bureau County, Illinois, but the Court held that the Commission Company was properly indicted and tried in Bureau County and that the place where the office is kept, where the agent in charge meets the customers and receives their orders and margins in unlawful transactions in corn, is the place where the offense is committed, although the proprietor of the office does buying and selling in his own name in another county.

Another case on this subject is that of *People* v. *Blumenberg,* 193 Ill. App. 119.

Illinois Cases in Gambling Transactions in Grain or Corporate Stocks

are as follows:

(1) Indictment of a customer or a broker for dealing in options in violation of Section 130 of the Illinois Criminal Code.

(2) Indictment of a keeper of a bucket shop for violating the provisions of the Illinois Bucket Shop Act of 1887.

(3) Actions against brokers by their customers to recover losses in gambling transactions.

(4) Actions by others not connected with the gambling deals against brokers to recover the penalty of treble the amount lost by the customer.

(5) Actions by brokers to recover commissions and advances made for their customers.

(6) Actions by employers against brokers to recover their money taken by employes and lost in speculation and gambling.

(7) Suits to set aside judgments, conveyances, contracts, mortgages, agreements, etc., given in connection with gambling transactions and declared void by statute.

(8) Suits to subject the premises where gambling is carried on to the payment of judgments recovered.

"Options."

The definition of an option and its application to Section 130 of the Criminal Code was stated by Judge McAllister in *Tenny* v. *Foote* (4 Ill. App. 594). It was adopted by the Supreme Court in *Tenney* v. *Foote* (95 Ill. 99). And again, by the Supreme Court in *Schneider* v. *Turner* (130 Ill. 28). Prior to the enactment of Section 130 in 1874 it was lawful in Illinois to give an option and such contracts were neither void nor voidable at the common law. The statute, however, made them so and in the *Schneider case* the Court said Section 130 was not intended to make unlawful merely such option contracts, as contemplated a settlement by differences,—or, in other words, merely gambling contracts,—as such contracts were illegal and void before such section was ever enacted. That the statute went much further and made all options to buy or sell at a future time any grain or other commodities, stocks, etc., gambling contracts, and void, whether intended to be settled by differences, or not.

At a later date, however, the Supreme Court said, in *Stewart* v. *Dodson* (282 Ill. 192, 196) that it was only contracts for options which were in the nature of gambling transactions that came within the meaning of Section 130 of the Criminal Code.

When the transaction does not contemplate acceptance or delivery of grain, it is not only in the nature of a gambling contract, but it is a wagering gambling contract, without reference to any statutory provisions.

When the legislature amended Section 130 of the Illinois Criminal Code in 1913, if it had been the intention to repeal the statute against options in grain, that could have been done, but if it was the intention to legalize options in grain, that was wholly unnecessary, for they were then legal at common law when they were not in the nature of gambling transactions.

When a man is buying or selling May wheat in March he is dealing in "futures" and not in "options" and the only option there is about it is that the seller has the option as to what day in May he will deliver it; but where a man is buying bids or offers after the close of the market, he is buying privileges or options, good until the close of the market the next day. They are "puts and calls." It was "puts & calls" that Section 130 of the Criminal Code was aiming at. (See 113 Ill. 228.) Option dealing in grain is "gaming." Within the meaning of Sections 130 and 132 of the Illinois Criminal Code (181 Ill. 199), "chance" is hazard, risk, or the result or issue of uncertain and unknown conditions. (6 Cyc. 890). An "option" is a right acquired by con-

tract to accept or reject a present offer within a limited or reasonable time in the future. In such contracts two elements exist; first, the offer to sell, which does not become a contract until accepted; second, the completed contract to leave the offer open for the specified time (225 Ill. 126, 130).

What Is a Wager?

In *Pearce* v. *Foote* (113 Ill. 239) the Court said a wager is a contract by which two or more parties agree that a certain sum of money or other valuable thing shall be paid or delivered to one of them on the happening of a certain event, and that was precisely what was done in this case, and that the betting was as to market values within stated periods. It is true that at common law wagers were not *per se* void, but by an English statute of 1845 wagers were prohibited and similar statutes have been passed in many of the states. Section 132 of the Illinois Criminal Code provides for the recovery of money lost by wagering and the principle which determines whether the sale of stocks or grain is a wager contract is that a *bona fide* contract to buy and sell will be sustained but where there is no actual sale and the transaction is to be settled by the payment of differences, it will be set aside (79 Ill. 328).

Bucket-Shops.

A bucket-shop is a place where wagers are made on the fluctuations of the market prices of grain and other commodities, and in "Gold Bricks of Speculation" it is said to be the open door to ruin. Sections 130 and 132 and the Bucket-Shop Act are to be

construed *in pari materia.* The intention of the legislature is to be ascertained in construing statutes from the act itself and other acts *in pari materia,* all to be taken together as if they were one law. (57 Ill. 371.) In another case the Court said the meaning of words used in a given statute may be ascertained from a consideration of other acts *in pari materia* where the words are used. Acts relating to the same subject matter and not inconsistent with each other are *in pari materia,* although they contain no reference to each other and are passed at different times. (177 Ill. 234.)

The Bucket-Shop Act of 1887 prohibiting gambling in grain or produce was intended to suppress all places where gambling in grain or produce is permitted, whether in bucket-shops or in offices maintained by members of the Chicago Board of Trade. (134 Ill. 66; 209 Ill. 528.) The keeper of a bucket-shop cannot shield himself from criminal responsibility by the fact that he made no inquiry of his customers. He must know that the transactions at his office are not gambling, or he must have just reason to believe that the buying or selling is not within the intended prohibition of the statute. (134 Ill. 66.)

"Forestalling" and "Cornering."

Forestalling the market means every device or practice by act, conspiracy, words, or news, to enhance the price of victuals or other provisions. At common law, as well as by statute, this was an indictable offense against public trade. In the United States, forestalling the market takes the form of "corners" or of "trusts," which are attempts by

one person or a conspiracy or combination of persons to monopolize an article of trade or commerce, or to control or regulate, or to restrict its manufacture or production in such manner as to enhance the price. (Bouvier's Law Dictionary.) A "corner" has been defined to be "whereby somebody succeeds in buying for future delivery more property of a given kind than is possible for the seller to deliver before the day of the maturity of the contract." It is a gambling contract under Section 130 of the Criminal Code. (168 Ill. 86, 91.)

In 83 Ill. 38, the Court said:

> "The fact that no wheat was offered or demanded shows, we think, that neither party expected the delivery of any wheat, but, in case of default in keeping margins good, or even at the time for delivery, they only expected to settle the contract on the basis of differences, without either performing or offering to perform his part of the agreement; and if this was the agreement, it was only gaming on the price of wheat, and if such gambling transactions shall be permitted, it must eventually lead to what are called 'corners,' which engulf hundreds in utter ruin, derange and unsettle prices, and operate injuriously on the fair and legitimate trader in grain, as well as the producer, and are pernicious and highly demoralizing to the trade."

The Leiter wheat deal of 1897-8 was an illustration of what can happen when the bottom falls out of a "corner." It was said that he was carrying sixteen million bushels of wheat when he acknowledged defeat. There can be market making in grain "futures" as well as in stocks.

How a Market Is Made.

During the investigation of the Pujo Congressional Committee, it was shown how a syndicate of bankers in New York agreed to underwrite a large number of shares of the capital stock of an oil company at a stated price per share. They appointed a specialist to make the market, and this is how it was made: He went into a broker's office and gave him an order to sell during that day, say ten thousand shares of stock on a scale of from $20.00 to $25.00 per share. He then went to another broker's office and gave him an order to buy during that day ten thousand shares at from $20.00 to $25.00 per share. He fixed the scale in each instance and when the market closed for the day oil stock had gone up $5.00 per share. The figures on the blackboard all over the country showed that to be true. This method of "making the market" was kept up until the stock had advanced about $50.00 per share and by that time the syndicate had fed to the public all they had to sell and down went the price and it continued to go down. The dear public were holding the stock.

The Market Value of Stock Is One Thing the Real Value of It Is Another.

The Illinois Supreme Court has said that where the stock converted by a corporation had no market value at the time of the conversion, it is proper, in proving its actual value, to show the value of the assets of the corporation, the amount of its liabilities and its earning power for a number of years prior to the conversion. (284 Ill. 594.) The value

of grain and grain "futures" is whatever the speculators and gamblers make it. It is not the grain or cotton the gamblers are trading in, it is the "futures." How far it is possible to regulate by law the dealings in stocks and grain "futures" so as to give to the public some protection is a problem. Open gambling can be prohibited, but disguised gambling in the forms of trade is difficult to control.

Puts and Calls.

In the Daily News of Chicago of April 15, 1903, there appeared the following editorial:

> "For the past 29 years it has been an offense against the criminal statutes of Illinois to deal in 'Puts & Calls' in connection with the Board of Trade or other institutions creating speculative markets. The difference between a dealer in that sort of gambling chance and a man who buys and sells grain under Board of Trade rules is the difference between a tin horn gambler and a merchant. Yet there is a strong effort on foot at Springfield to secure the repeal of this criminal statute or its amendment so that it will be ineffective. It is significant that the sentiment among reputable Board of Trade members is strong against tampering with the existing law. The only effect of abolishing or crippling it would be to put Board of Trade members on a level with the crap-shooters of the levee. Dealing in 'Puts & Calls' is mere cheap gambling on the turn of the market the next day. There is not and cannot be the slightest pretense of buying and selling grain about such a pitiful performance. It is a 'business' suitable only for street arabs. Indeed, to permit the practice will promote gambling among office boys and clerks. Let the law stand. Nobody has had any

reason to complain that additional forms of gambling were necessary about the Board of Trade or anywhere else. Ever since 1874 to to deal in 'Puts & Calls' has been punishable in this state by a fine of from $10.00 to $1,000.00 or imprisonment in the County Jail for a year or less, or both fine and imprisonment. The law is good and had a good effect. To repeal or weaken it would be demoralizing."

In the same paper appeared on May 24, 1913, the following news item:

"Members of the Board of Trade stood in line at the last hour of the session today signing a petition to the Illinois Legislature and asking that the 'Put & Call' bill which has been fought so bitterly by John Hill, Jr., and others, be passed. In his recent charges against members of the trade and the law makers at Springfield, Mr. Hill claimed that few of the members of the Board of Trade really wished such a bill passed. The drawing up of the petition and the adding of signatures as fast as they could be written today were the answer to his objection."

Gambling in Illinois.

In the May, 1921 number one of Vol. 16 of the Illinois Law Review, pages 23 to 46, there is a very able article by George D. Smith on gambling in Illinois and practically all of it is devoted to gambling in grain "futures." He says the legislature did a vain thing in declaring what was always the law when Section 130 of the Criminal Code was amended in 1913. Legislative proceedings at Springfield about the time of the amendment should be read in connection with it. The author of "Goldbricks of Speculation" can also throw some light on the subject.

Millions of Dollars are Lost Annually by the People —The Outside Public—in Speculation and Gambling in Grain and Other Farm Products.

There is no way of ascertaining what proportion of the losses are made in speculation and what proportion are made in gambling, nor is there any way of ascertaining how many million bushels of grain "futures" are traded in, nor is there any way of ascertaining how many innocent people closely connected with the losers are made to suffer, nor is there any way of ascertaining how much the markets are "manipulated"; but if the General Assembly will enact an immunity statute and thus make the books of brokers subject to inspection, more information can be obtained. Thousands of people gamble in stocks and in grain because they can do it under the guise of respectability. They would not be seen going into a gambling house where they might get a square deal at faro, but they will play a game where the cards are shuffled under the table and where the commissions are large. A scalper of stocks never can be successful, because the game is too much against him. If he buys one hundred shares and the market goes up a point, or a dollar a share, he makes about $71.00. If it goes down a point, or a dollar a share and he closes out, he loses $127.00. Who can play a game with such chances against him? If he carries the stock, he is charged with interest on the whole amount of the purchase less what he has deposited as margin, in addition to the commissions and he gets nothing in return unless he holds the stock long enough to get a dividend. If people will look at the Chicago Telephone Directory and see the

number of brokerage houses and brokers there are in Chicago and figure what it costs to maintain those establishments, they may be able to guess where the money comes from. If they will notice the daily number of chair warmers watching the blackboard, they may also guess how many of them are gambling. If they will examine the Supreme and Appellate Court Reports of Illinois, they will see how many times the word "gaming" appears in the index to the volumes. Some people will say that the bucket-shops have been driven out of Chicago—but have they? Has bucketing been stopped? There is a way to find out. Go and try it and see how quickly your order will be taken, but do not look for the sign on the door of "Bucket-Shop" because there are none here (*i. e.* signs). No one ever saw one. You will see, however, plenty of private wires and they are costly. There have been and probably are now some brokerage offices in Chicago where no books are kept,—only a few yellow sheets of paper, a few lead pencils, a ticker and a telephone. In the past some of the customers were known by number only. They were required to trade by placing stop loss orders so that when their money ran out they were also run out. The places referred to were not maintained by the respectable element of the Board of Trade who do a clean, straight business, but by some of the black sheep of the flock. It was only a few of the members of the Board who contributed to the fund of $4,250.00 to be legitimately used in furthering the amendment to Sections 130 and 132 of the Illinois Criminal Code in 1913. Not one of them owned a ticker. The tickers are all leased and if they are gambling instruments, in some

instances, some one else owns them. It might be good for the people if we had some new law on grain gambling and if the law we did have was more frequently enforced. It might also be a good thing for the welfare of the people of Chicago if John Hill, Jr. would make another raid to see if he can find any bucket-shops or any bucket-shopping.

"Blue Sky" Laws.

So-called "blue sky" laws restricting the sale of corporate securities are now in force in more than thirty-seven States and if it is necessary to protect the people against being swindled in stocks, is it not also necessary that they should be protected by laws that will restrict speculation and prohibit gambling in farm products? Section 130 of the Criminal Code, as it was from 1874 to 1913 was tested as to its constitutionality in the case reported in 186 Ill. 43, affirmed in 184 U. S. 425. When the amendment of 1913 was made, it was allowed to become a law without the signature of the Governor and some other legislation enacted about the same time was severely criticised in the press. It might be very much to the interest of the public if the present law was repealed and re-enacted as it was in 1874.

Brokers Must Take Notice.

In a federal case (88 Fed. Rep. 868) it was held that brokers who receive from a bank president drafts on the bank in payment for his private losses in board of trade speculation, under circumstances charging them with notice that the drafts represent money embezzled from the bank, are liable to the

bank for the proceeds of such drafts. In this case Grosscup, J., referring to the Board of Trade, said:

> "These marts of trade are, in many respects, greatly beneficial to the interests of mankind. They balance, like the governor of an engine, the otherwise erratic course of prices. They focus intelligence from all lands and the prospects for the whole year, by bringing together minds trained to weigh such intelligence and to forecast the prospects. They tend to steady the markets more nearly to their right level than if left to chance or unhindered manipulation. Nor are the purchase and sale of 'futures' intrinsically wrong. They are the means of bringing about those stable and steadying results. But the tendencies and excesses of human nature,—its susceptibility to warp in the fierce heat of excitement or distress—are facts to be heeded by the broker, as well as by the public. He may not close his eyes to probabilities, or even strong possibilities that are patent to the rest of mankind. If he does, the law rightfully makes him accountable to those who thereby innocently suffer."

Evidence.

The questions of evidence as to gambling contracts that have been passed upon by the Supreme and Appellate Courts will be seen by referring to MacNeil's Illinois Evidence, p. 585 *et seq.* Also, in 6 Enc. Evidence, 186 *et seq.* The Supreme Court of Minnesota has said that:

> "The Courts are bound to take judicial notice that stock and grain gambling is carried on at the exchanges in the commercial centers of the country; and in view of this, contracts for future delivery will be very carefully scrutinized." (47 Minn. 228.)

In *Beveridge* v. *Hewitt,* (8 Ill. App. 467) it was said that:

> "The fact that such contracts or sales are usually settled by counter sales to other parties, does not render them legitimate, nor is it necessary to their invalidity to show that such other parties knew they were engaged in gaming contracts. From the fact that they were engaged in making such counter sales according to the custom of the Board of Trade an intention to enter into transactions of this character will be imputed to them."

When it is necessary to show that both parties intended to settle on differences. The Illinois Supreme Court said in 167 Ill. 396, that:

> "The intention of the parties in this regard may be established, not merely by their assertions, but by all the attending circumstances of the transaction."

The failure or inability of a broker claiming to have made *bona fide* contracts for his principal to show the existence of such contracts is admissible to show that he was engaged in gambling. (See *Higgins* v. *McCrea,* 116 U. S. 671.) More than the provisions of the contract itself or the declarations of the parties, their circumstances and conduct furnish the most cogent and reliable evidence of their true intent in *Melchert* v. *Am. Union Tel. Co.,* 11 Fed 193, the Court, speaking of the legality of transactions in grain "futures" said:

> "We must look at the actions of interested or accused persons rather than their mere words to ascertain their real intention. We must consider what they have done rather than what they have said when called to account for their actions. We can best learn what interpretation the parties themselves have put upon their

own contract by considering what they have done under and in pursuance of it with a view to its settlement or fulfillment."

The Court also said:

"In seeking to ascertain the intentions of parties to alleged grain gambling transactions, it would not do to place any great stress on their own declarations whether under oath or not."

Disguised gambling in grain "futures" must necessarily be proven by circumstantial evidence. See 215 Ill. 348:

"The intent that no grain is intended to be accepted or delivered is inferred from the facts and circumstances proven and, as hereinbefore shown, it is not the intent of the customer and the men in the pit with whom the broker deals, but it is the intent of the customer and the broker. The customer does not look to anyone but the broker for his profits, and the broker looks to him for his losses. The customer does not inquire into the financial responsibility of the man with whom the broker deals and does not care anything about it. When the deals are gambling deals and the broker has notice or has what would put a prudent man on inquiry, he cannot avoid liability. In such case the Supreme Court has held that the broker is a 'winner.' Whether he is a 'winner' or not, theoretically he is a 'winner' within the meaning of the statute." (See 181 Ill. 199.)

When a broker takes orders from a minister of the gospel, as was shown in the case in 36 Ill. App. 179 and allows him to deal in large quantities of grain "futures" and also knows that he does not intend to take any grain and that he has no money to pay for it, these were all circumstances that established the nature of the dealings as gambling transactions. In 167 Ill. 388, it was held that:

"Where a party makes a gambling contract with a broker to buy and sell stocks, both parties to the contract are principals, as there can be no such thing as agency in the doing of an unlawful act."

Whether the contract made with the broker—which may be an implied as well as an express contract—is a gambling contract, must be ascertained from circumstances when it is an implied contract. When it is shown by what was done and by what was said and when all the surrounding circumstances are shown, it is for the jury to say what the intentions of the parties were. The documentary evidence of the transactions between the customer and a broker may be voluminous and it has frequently been held that where the results of voluminous facts contained in the writings or of the examination of many records and books are to be proven and the necessary examination of this documentary evidence cannot be conveniently or satisfactorily made in court, it may be made by an expert accountant or other competent person and the result thereof may be proven by him if the books, papers or records themselves are properly in evidence. It seems, however, that the jury are not bound by the result thus ascertained, but may make their own calculations from the books and papers in evidence. (232 Ill. 54, 71, 17 Cyc. 511.)

Instructions to the Jury.

In an action between a broker and customer the latter is entitled to have the jury instructed as to whether, from the evidence an intention on the part of both the plaintiff and defendant, to embark in a

series of gambling transactions is not established by *implication.* (20 Ill. App. 76.)

An instruction to the jury in a case involving transactions in grain that was approved in *Stewart* v. *Schall,* 65 Md. 294; 4 Atl. Rep. 399, was as follows:

> "If the jury shall find from the evidence that when the defendant gave to the plaintiffs the several orders offered in evidence for the purchase and sale of grain, it was mutually understood between them that the defendant was not to deliver any of the grain that he ordered to be bought, but that all of said transactions in grain were to be settled and adjusted by the payment or receipt, as the case might be, of differences between the price at which said grain should be bought and at which it should be sold; and if the jury shall further find that in pursuance of said mutual understanding, the plaintiffs, in their own names, transmitted to their correspondents for execution said orders of the defendant, and that said orders were executed by the said correspondents of the plaintiffs upon the credit of the plaintiffs and upon security furnished by them, then the plaintiffs are not entitled to recover in this action for services rendered or advances made by them in furthering and conducting said transactions for the defendant."

Governmental Regulation of Speculation.

In the Annals of the "American Academy of Political Science," (No. 2 Vol. 38, September, 1911), devoted to the American Produce Exchange markets, there is, on pages 126 to 154 inclusive, an able article by Professor Carl Parker of Columbia University, New York, on "Governmental Regulation of Speculation." First, on public opinion and speculation; second, on speculation and the law; third,

on Federal regulation in the United States, and fourth, on state legislation affecting speculative markets. One number of the annals for 1910 was devoted wholly to stock and the stock market (No. 3, Vol. 35). In the March, 1895, number of "Systematic Political Science" by the University Faculty of political science of Columbia College, there is also a very able article on "Legislation against 'Futures'" by Professor Henry Crosby Emery. These numbers can probably be obtained from the Dixie Business Book Shop, No. 140 Greenwich street, N. Y.

To What Extent Have the Laws of Illinois Been Enforced Against Gambling in Grain?

Neither the state nor the county have been prosecuting anyone for gambling in grain or keeping a bucket-shop during recent years but there have been many cases where brokers have failed to obtain judgments for commissions and advances (181 Ill. App. 127) and there have been cases where a loser has recovered the amount of his loss. (*Level* v. *Chadbourne,* 99 Ill. App. 171.) And there have been cases where someone has sued to recover the penalty of treble the value of money lost. (181 Ill. 199.) In this case the Supreme Court said:

> "The severity of the penalty imposed by a statute against gambling which authorizes a recovery by any person of treble the amount lost, furnishes no reason against its enforcement, where the language authorizing such recovery is clear."

There have been other cases where the money misappropriated by an agent and lost by him in gambling in grain has been recovered. (88 Fed. 868.)

There have been other cases in which landlords have failed to collect their rent because the premises were knowingly rented for a gambling house. *Harris* v. *McDonald,* 194 Ill. 75. Section 132 of the Criminal Code that allows the loser or another to recover was not enacted in the interest of the persons enabled to recover, but was for the purpose of preventing and punishing gamblers. It is not the policy of Illinois to allow gambling, but it would seem that the small gambler is punished and the respectable gambler is not. In the language of the late James Harold Romain, "Why this discrimination?" His book on gambling is a masterpiece by a scholar. The enforcement of the law against wagering and gambling on the fluctuations of the market and when there has been no intention of the parties to accept or deliver the corporate stock or produce has not been, and is not efficient, for several reasons, the principal one of which is because of the difficulty in securing evidence to prove the violation of the law. Undisguised gambling can easily be proven. Disguised gambling, such as this book is aimed at, is more difficult. Another reason is that lawyers and courts are not, as a rule, familiar with the business carried on by brokers and the exchanges and with the transactions that are legitimate and those that are not legitimate. A still further reason is, as stated by an eminent law writer, that the cases are a great many times not properly prepared and presented to the courts. This results from a want of knowledge as to the facts of the particular case, and, consequently, a lack of proper pleading and presentation of the evidence. The courts decide questions raised by the issues formed by the plead-

ings and not questions that are not involved in the issues presented. To make the enforcement of the law more effective, legislation on these matters is badly needed. Speculation has always existed wherever buying and selling has existed—ever since the days when Joseph cornered the grain supply of Egypt, as reported in the book of Genesis; but if the outside public knew the small chance it has for success when speculating in markets "manipulated" and "made" by experienced operators, there would not be so much speculation.

Buying and Selling "Futures" and "Options."

Buying or selling "futures" when the contracts are *bona fide* contracts is not unlawful, but when the transactions are mere wagers on future prices, without any intention of acceptance or delivery of the property bought or sold, they are unlawful and punishable. It is the intention, at the time the contract is made, that governs and there is nothing to prevent the buyer or seller from selling what he has bought, or buying what he has sold "short" at any time he desires to do so. "Short selling" is not unlawful. It is not necessarily gambling, but it may be, just as the pretended buying may be. The Illinois Supreme Court has said that "legitimate transactions on the Board of Trade are of the utmost importance in commerce." Such contracts, whether for immediate or future delivery, are valid in law, and receive its sanction and all the support that can be given to them. It is only against unlawful "gambling contracts" the penalties of the law are aimed and no subtle finesse of construction ought to be adopted to defeat the end it is to be

hoped may be ultimately accomplished. (113 Ill. 239.)

The same Court also said:

> "The true idea of an option is what are called, in the peculiar language of the dealers, 'puts and calls.' A 'put' is defined to be the 'privilege of delivering or not delivering' the thing sold, and a 'call' is defined to be the 'privilege of calling for or not calling for,' the thing bought. 'Optional contracts,' in this sense, are usually settled by adjusting market values, as the party having the 'option' may elect. It is simply a mode adopted for speculating in differences in market values of grain or other commodities. It must have been in this sense the term 'option' is used in the statute. Such a contract is, obviously, fictitious, having none of the elements of good faith, as in a contract where both parties are bound, and is defined by statute as a 'gambling contract.'"

The "option contracts" spoken of in many Illinois cases, are explained in the cases themselves and mean what is commonly called "puts and calls" where there is no obligation on the part of the person to sell or to buy, and that class of contracts is the class covered by the statute. *Clews* v. *Jamieson,* 182 U. S. 461-495.

When an "option" called a "bid" or an "offer" is bought or sold, the offer is a "call" and the "bid" is a "put." If one buys an "offer" good for the next day, he has a right to "call" for the grain at that price and if he buys a "bid" good for the next day, he may "put" the grain to the other fellow at the price he gave for the bid. In 1913, a member of the General Assmbly said he would not know a "put" or a "call" if he saw one coming down the aisle.

Appeal and Error.

An appeal may be taken from the judgment of the trial court which has been entered on the verdict of the jury to the Appellate Court, by executing the proper bond, or the case can be taken to the Appellate Court on a writ of error without bond; but Section 106 of the "Practice Act" provides that no writ of error shall operate as a supersedeas unless the Supreme Court, or Appellate Court, as the case may be, or some judge thereof in vacation, after investigating a copy of the record, shall order the same to be made a supersedeas, nor until the party procuring such writ, shall file a bond in the manner and under the conditions required in cases of appeal. Section 17 also provides, with some exceptions unnecessary to state here, that a writ of error shall not be brought after the expiration of three years from the rendition of the decree or judgment complained of. The Appellate Court will reverse a judgment based on the verdict of a jury where it appears that the judgment is clearly against the manifest weight of evidence; that the facts in the case will never appear different and that another trial would serve no good purpose. *Kennedy* v. *Chicago & Carterville Coal Co.*, 188 Ill. App. 356. The Constitution of Illinois, Article 2, Sec. 5, provides that:

> "The right of trial by jury, as heretofore enjoyed, shall remain inviolate."

But

> "The right of trial by jury, prior to the constitution is subject to the power of a court of review to reverse a judgment for the plaintiff without remanding the cause or awarding a *venire de novo*, in cases where it clearly appears

> as a question of law, that in the end there could be no recovery which could be permitted to stand." *City of Spring Valley* v. *Coal Co.*, 173 Ill. 497.

It is, therefore, settled that a judgment based on the verdict of a jury may be reversed by the Appellate Court without remanding the case for a new trial, and in such case, the Appellate Court ultimately settles the question as to whether or not the weight of evidence shows the transactions were or were not gambling transactions. In the case last cited, the Court said:

> "The right to a trial by jury did not include the right to successive trials where it was clear that in the end there could be no recovery which could be permitted to stand."

Qui Tam Actions.

Sec. 132 of the Illinois Criminal Code, which allows anyone to sue for treble the amount lost in gambling, in case the loser does not sue within six months, is a penal action, and in actions for a specific penalty, the amount found by the verdict or adjudged by the Court, must be the precise penalty, neither more nor less. (16 Enc. Pl. & Pr. 300.)

From the judgment of a justice of the peace in a penal action, an appeal lies to the Circuit Court, the same as in other civil actions, and from judgments in courts of record, the appeal must be to the Appellate Court and the decision of the Appellate Court is not final, however, but may, in turn, be reviewed by the Supreme Court, regardless of the amount involved. (*Id.* 304, citing Illinois cases.)

The plaintiff, as well as the defendant, may appeal in all penal actions, the verdict of the jury in favor

of the latter not being conclusive, as in prosecutions for crime. (*Id.* 307.)

While an action to recover a penalty partakes of the nature of both a criminal prosecution and a civil suit, as a general rule, those rules of evidence applicable to the particular civil action obtain, and not those governing a criminal prosecution. Depositions may be taken, and the constitutional provision which entitles a party in a criminal prosecution to be confronted with the witnesses, does not apply. The rule as to the testimony of the defendant, however, follows that of criminal prosecutions rather than that of civil actions. It is well settled that he cannot be compelled to give testimony which would subject him to the penalty, or which would make him liable under a criminal prosecution. Nor can he be compelled to produce books or papers which would tend to the same result. While the courts of the various states differ as to the amount of evidence necessary to sustain the recovery of a penalty, the weight of authority seems to be that the rule is the same as in other civil actions and that a preponderance of evidence only is necessary. Some of the courts, however, insist that a mere preponderance will not suffice, but that the preponderance must be clear and satisfactory, and that is the rule in Illinois. (9 Enc. Evidence, 747-751.)

In computing treble the amount of money lost in gambling, the Supreme Court has held that the amount recoverable is not limited to three times the *net* loss sustained in the *whole period* of the gambling transactions, but that it is computed upon each "time" or "sitting" mentioned by the statute. This holding was made in a case to recover treble the

moneys lost at gaming, and it was also held in the same case that no demand need be made before bringing an action under Sec. 132 of the statute. (157 Ill. 350.)

The Vernacular of the Stock and Grain Markets.

Puts, calls, straddles, spread eagles, hedging, ringing up, covering, arbitraging, clearing trades, regular warehouses, short selling, long account, short account, daily and monthly statements, grain to arrive, margin accounts, cash grain, commissions, advances, splits, board rules, private wires, bucketing, warehouse receipts, borrowed stock, interest charges, call money, grain inspection charges, demurrage, switching charges, wash sales, manipulation, indemnities, bids and offers, ups and downs, privileges, options, futures, orders, calls for margins, May wheat, December corn, October cotton, September oats, rails, industrials, advances, switching trades, pit traders, plungers, suckers, bulls, bears, lambs, dubs, tickers, board markers, private warehouses, scalpers and many other words and phrases are in use in brokerage houses and on the exchanges. It requires quite an education to become a successful broker, and if the customers were better educated in this particular line of business in which they are engaged, when they begin trading, they would not be likely to make so many losses.

All of the above terms are understood by an experienced broker, but a great many of them are not understood by the public, *e. g.*, the business of the arbitraguer is, buying in one market at a price and selling in another market at a better price, the object being to net the difference that may exist

between the buying and selling prices in the two markets. Or, the operation may be reversed by selling first in one market and buying in another. There may be such a wide difference in the market price of stocks between New York and London that a well posted and skillful arbitraguer can make money without much risk in buying in one market and selling in the other at about the same time.

Anyone engaged in gambling transactions in "options," "futures" or stocks, when sued by a broker to recover commissions and advances, may prevent a trial by jury by allowing the case to go by default. A judgment will, of course, be rendered against him, but he can file a bill in equity to have the judgment set aside, and in this way he can have the question of whether the transactions were or were not gambling transactions decided by a chancellor.

In *Mallett* v. *Butcher*, 41 Ill. 382, the Court referred to the general doctrine, that when a party has a defense to an action at law, known to him, and he fails to make it, no court can relieve him; but the Court said that by the statute all judgments rendered on gambling contracts are void and may be set aside and vacated by any court of equity upon bill filed for that purpose, although the character of the contract could have been set up as a defense in the suit at law in which such judgment was rendered, and the party had knowledge of the defense and omitted to assert it.

A loser in a gambling contract who surrenders a thing of value to the winner under such contract, and afterwards peaceably regains possession thereof from the winner, may retain the same. *Stanford* v. *Howard,* (Tenn.) 52 S. W. 140.

The endorsement or assignment of a note given to pay a wager is void, even in the hands of a *bona fide* holder, and a note given to pay losses under a gambling contract cannot be enforced in Illinois by an innocent holder, even though the transaction occurred in any other state under the laws of which the note would be collectible. 155 Ill. 617.

Money loaned to enable a borrower illegally to speculate in grain cannot be recovered even though the lender did not expressly advise, abet or encourage the borrower in the commission of the illegal act; it is sufficient if the lender knew at the time he furnished the money that it was to be used for the purpose of illegal options. 143 Ill. App. 151. See also L. R. A. 1918, c-247-n.

When the payee of a draft or bill of exchange, having lost the same at gaming, endorses it over to the winner, said contract of endorsement is void under the Illinois statute against gaming and the property in the draft or bill still remains in the payee, although after such endorsement such draft or bill passes into the hands of an innocent holder for value, still the legal consequences of such endorsement being void, must be the same in the hands of a *bona fide* holder and no more effect can be given to it than to a forged instrument. *National Bank of Chicago* v. *Spaid,* 8 Ill. App. 493. *Chapin* v. *Dake,* 57 Ill. 295.

Defenses to notes and other obligations given for gambling debts is the subject of an extensive note in 119 Amer. State Rep. 172-181.

There is this difference in gambling in stocks and in grain "futures." The Court in *Pelouse* v.

Slaughter, 241 Ill. 228, when speaking of the transactions, said:

> "The transactions were not contracts for purchases and sales where the subject matter was to be delivered in the future, which is a quite common form of gambling in grain and other commodities, and the inferences as to the intention to receive or deliver which attend such transactions are absent. Circumstances which would lead to the conclusion that the intention of parties was to settle on differences in market value at the time for delivery would not justify a belief that there was such an intention where stocks were actually sold, delivered and paid for."

See also 88 Fed. 868.

Dicisions of the Appellate Court in Illinois.

Section 17 of Chap. 37, Illinois Statutes, declares that:

> "All opinions or decisions of said Court upon the final hearing of any cause, shall be reduced to writing by the Court, briefly giving therein the reasons for such opinion or decision, and be filed in the case in which rendered; *provided,* that such opinion shall not be of binding authority in any cause or proceeding, other than in that in which they may be filed."

Prosecutions by Information.

Prosecutions for a violation of the law in gambling in "futures" and "options" are not confined to prosecutions by the city or by the state authorities by indictment, but they may be instigated by the filing of an information by a private citizen.

> "The only offenses which may be prosecuted by information are those when the punishment

is by fine, alone, by imprisonment, otherwise than in the penitentiary, alone, or either by fine or such imprisonment, or by both fine and imprisonment, but cases in which the punishment is by fine and imprisonment and some other additional penalty, can be prosecuted only by indictment." See 236 Ill. 612; 258 Ill. 383; 236 Ill. 612.

Rules and Regulations of the Board of Trade.

Section 8 of Rule 4 prohibits any member of the Board from knowingly executing any order or orders in the business of dealing in differences on the fluctuations in the market price of any commodity or corporate stock and if the member does so, he is declared to be unworthy to be a member of the association, and, upon complaint to and conviction thereof by the Board of Directors, the rule says he shall be expelled from membership in the association. How often, if at all, has this rule been invoked? And who enforces the rules of the Board of Trade? Not the Courts, but the inside Court of the Board of Trade and what members of that organization may think does not amount to dealing in differences may be very different from what one of the regularly constituted courts of law would think about it. The trouble with the Board of Trade and such institutions as the New York Stock Exchange, is that they are a law unto themselves. They strongly object to any interference by the outside public, or even by the Courts. They wish to be the arbiters of what is right and wrong in these matters and it is somewhat like a man being judge in his own case.

It has often been said that a member of the Board of Trade is the soul of honor, and, so far as living

up to his obligations on the Board are concerned, he is compelled to be, or he would be expelled. Honesty in money transactions is one thing; and honesty of purpose is another.

Pleadings.

When it appears that the Court is being called upon to adjudicate rights based upon a contract void as against public policy or as in violation of law, the Court should decline to proceed with the case, whether the claim of illegality is made by the pleadings or not. 245 Ill. 454.

In an action to recover the penalty, under Sec. 132 of the Illinois Criminal Code, the form of declaration in *Kruse* v. *Kennett,* 181 Ill. 199, has been approved by the Supreme Court. 273 Ill. 194.

In a plea of *non-assumpsit* or the general issue, gaming might formerly have been given in evidence, but now must be pleaded specially. Chitty Pl. (10 Am. ed. 1847) Vol. 1-477, 743. Illegality in the consideration or in the transaction is not presumed until the contrary is shown. *Id.* 221. Questions of pleading, practice, evidence, instructions and appeal and error will be made the subject of another brochure at some future date.

The Power of the Legislature to Change the Rules of Evidence.

The right to have one's controversy determined by existing rules of evidence is not a vested right which a party may seek to enforce, and such rules are subject to continuous modification and control by the legislature, and the changes effected may be

made applicable, even to existing causes of action without trespassing upon constitutional prohibitions respecting retrospective enactments. The only limitation on the power of the legislature in this regard is that the party affected by the change must not be left without any remedy at all. The power of the legislature to give conclusiveness to certain forms of evidence is the subject of an extensive note and collection of cases in 54 Central Law Journal, 490-492. It is much easier to realize the instances and source of the police power than to mark its boundaries or prescribe limits to its exercise. Each law relating to the police power involves the questions: First, is there a threatened danger? Second, and does the regulation involve a constitutional right? Third, is the regulation reasonable? See 144 N. Y. 529. 145 *id.* 32. If the laws of Illinois were so changed with reference to the rules of evidence as to make it less troublesome to prove when a transaction in grain "futures" is or is not a gambling transaction, it would go a long ways toward putting a stop to the evil of gambling in grain "options."

The Relation of Broker and Customer.

In *Flagg* v. *Baldwin*, 38 N. J. Equity, 229, the Court said:

> "The point of divergence between the New York and Pennsylvania cases is upon the relation existing between the customer and the broker who is managing a speculative account upon a margin. The New York cases treat the broker as a mere agent, and so as a pledgee of the stocks purchased on such an account."

This result was reached by a divided court, Jus-

tices Grover and Woodruff delivering vigorous dissenting opinions. The latter especially points out in a perspicuous and in my judgment convincing way, the plain difference between a stock broker dealing on margins and a broker or agent in ordinary transactions. *Markham* v. *Jaudon,* 41 N. Y. 256. In Pennsylvania it is held that one who enters into a stock speculation on margins, with a stock broker is to be considered as dealing with the broker as a principal, and not as an agent. *Ruchizki* v. *De Haven,* 97 Pa. St. 202. This view is, in my judgment, entirely correct. The customer who deals on margins knows no other person in the transaction, but the broker. He has no claim upon and is subject to no liability to any other person whatever. The same doctrine has been announced by the Supreme Court of the District of Columbia (*Justh* v. *Holliday,* 11 Wash. L. Rep. 418), and by the U. S. Circuit Court in the District of Kansas, *Cobb* v. *Prell,* 22 Amer. Law Reg. (N. S.) 609. To the latter case a note is appended discussing the subject and collecting many cases.

Intention.

The character of a speculative purchase or sale of commodities, as a wagering transaction, is determined by the intention of the parties, and it is to the ascertainment of this intent that the evidentiary inquiry is directed; but what parties? The customer and the broker, or the customer and the man with whom the broker deals on the Board of Trade? The Illinois Supreme Court has answered the question in the case of *Jamieson* v. *Wallace,* 167 Ill. 388, by saying that the contract between the broker and

the customer was the only contract which could be regarded in the decision of the case. See p. 399 in *Winward* v. *Lincoln* (R. I.), 64 L. R. A. 160. The Court referred to the *Jamieson case* and said:

> "But the opinion ends by holding that under the Illinois Criminal Code, Sec. 130, which positively forbids all sales of options, the intent of the customer and the broker alone is material, and it makes no difference if the broker actually purchases the stocks."

In *Walker* v. *Johnson,* 59 Ill. App. 448, Judge Gary said:

> "That the appellants intended no gambling with the parties with whom they contracted but, on the contrary, intended to take and pay for what they bought, and deliver what they sold, cuts no figure, if they knew that the appellee intended gambling or, but for their own obstinacy, would have so known."

This same doctrine is announced in *Lamson* v. *West,* 201 Ill. App. 251 (1916). The question is no longer an open question in Illinois, as will be seen by the cases referred to above, and hereinbefore, and also by the following:

Wheeler v. *McDermid,* 36 Ill. 179.
Miles v. *Andrews,* 40 Ill. App. 155.
Carroll v. *Holmes,* 24 Ill. App. 453.
6 Enc. Ev., 165 n.

The intent is usually arrived at as an inference from the acts, conduct and declarations of the person whose intent is the subject of inquiry. 7 Enc. Ev., 605, but when the intention of a party is material to the issue, he has a right to testify as to what it was. *Pardridge* v. *Cutler,* 104 Ill. App. 89, but as said in *Melchert* v. *Am. Union Tel. Co.,* 11 Fed. Rep. 193:

> "We must look at the actions of interested or accused persons rather than their mere words to ascertain their real intention. We must consider what they have done rather than what they have said. In seeking to ascertain the intentions of parties to alleged grain gambling transactions, it would not do to place any great stress on their own declarations, whether under oath, or not."

When a physician or a lawyer, who has no use for any grain, and no place to store it, and no money to pay for one-fifth part of what he is dealing in, is allowed to trade on a margin of five cents or less per bushel, and is only allowed by the broker to trade with the understanding that he will place stop loss orders, and is spending most of his time during market hours in the broker's place of business watching the blackboard and makes and closes trades hourly or oftener and closes all his trades the same day, paying up his losses daily and dealing in as much as one hundred thousand bushels of grain in a day, and never did take or deliver any grain, and the broker sees and knows all these circumstances, can a judge or a jury, when such proof is made, rightly infer anything else than that the transactions are mere wagers and gambling transactions? Prove the facts and circumstances, and the court or the jury, as the case may be, will not have much difficulty about drawing the line between what is gambling and what is speculation and this without reference to what is sworn to by one or both of the parties as to their intention.

In *Cothran* v. *Ellis*, 125 Ill. 501, the Supreme Court said such transactions are a *national sin and a blighting curse* and that considerations such as the

Court described imperatively demand at the hands of the courts of the country a faithful and rigid enforcement of the laws.

George Washington, the father of our country, in a letter to Bushrod Washington, of January 15, 1783, said:

> "Gaming is the child of avarice, the brother of iniquity and the father of mischief."

> "Look around, the wrecks of play behold;
> Estates dismembered, mortgag'd, sold!
> Their owners now to jails confin'd,
> Show equal poverty of mind.

APPENDIX.

The laws of Illinois, on the subject of gambling in grain, are in the Illinois Statutes, Annotated, J. & A.—1913, Vol. 2, p. 2063, and as amended in 1913 in Callaghan's Illinois Laws, Annotated, 1913-1916, p. 503.

The following is a copy of that part of Chapter 38 of the Illinois Criminal Code, taken from the revised statutes of Illinois of 1917 and which is now in full force and effect.

GAMBLING AND GAMBLING CONTRACTS.

126. GAMING.] § 126. Whoever shall play for money, or other valuable thing, at any game with cards, dice, checks, or at billiards, or with any other article, instrument or thing whatsoever, which may be used for the purpose of playing or betting upon, or winning or losing money, or any other thing or article of value, or shall bet on any game others may be playing, shall be fined not exceeding $100 and not less than $10. [R. S. 1845, p. 174, § 130.

127. GAMING HOUSE.] § 127. Whoever keeps a common gaming house, or in any building, booth, yard, garden, boat or float, by him or his agent used and occupied, procures or permits any persons to frequent, or to come together to play for money or other valuable thing, at any game, or keeps or suffers to be kept any tables or other apparatus, for the purpose of playing at any game or sport, for money or any other valuable thing, or knowingly rents any such place for such purposes, shall, upon conviction, for the first offense be fined not less than $100, and for the second offense be fined not less than $500, and be confined in the county jail not less than six months, and for the third offense shall be fined not less than $500, and be imprisoned in the penitentiary not less than two years nor more than five years. [R. S. 1845, p. 174, § 129; L. 1871-2, p. 462, §1 *Kroer* v. *The People*, 78 Ill. 294.

128. GAMING IN TAVERN.] § 128. Every tavern keeper, common victualer, or other person, keeping or suffering to be kept, in any place occupied by him, any implements such as are used in gaming, in order that the same may, for hire, gain or reward, be used for the purpose of amusement, who suffers any implement of that kind to be used upon any part of his premises, for the purpose of gaming for money or other property, or who suffers any person to play at an unlawful game or sport therein, shall for the first offense be fined $100, and for the second offense be fined not less than $500 and be confined in the county jail not less than six months, and for the third offense shall be *372] fined not

less than $500 and be imprisoned in the penitentiary not less than two nor more than five years, and in either case he shall forfeit his license, and shall not again be licensed as a tavern keeper for one year from his conviction. [R. S. 1845, p. 174, § 131.

129. DECOYS.] § 129. If any one shall through invitation or device, prevail on any person to visit any room, building, booth, yard, garden, boat or float kept for the purpose of gambling, or prostitution or fornication, he shall, on conviction thereof, for the first offense be fined not less than 10 nor more than $100, and for the second offense he may be fined not less than 100 nor more than $300, or may be confined in the county jail not exceeding six months, or both, in the discretion of the court.

130. GAMBLING IN GRAIN, ETC.] § 130. Whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain, or other commodity, stock of any railroad or other company, or gold, *where it is at the time of making such contract intended by both parties thereto that the option, whenever exercised, or the contract resulting therefrom, shall be settled, not by the receipt or delivery of such property, but by the payment only of differences in prices thereof*, or whoever forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any of such commodities, shall be fined not less than $10 or more than $1,000, or confined in the county jail not exceeding one year, or both; and all contracts made in violation of this section shall be considered gambling contracts, and shall be void. [As amended by act filed June 11, 1913. In force July 1, 1913. L. 1913, p. 256.

131. GAMING CONTRACTS.] § 131. All promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, drawn or entered into, or executed by any person whatsoever, where the whole or any part of the consideration thereof, shall be for any money, property or other valuable thing, won by any gaming, or playing at cards, dice, or any other game or games, or by betting on the side or hands of any person gaming, or by wager or bet upon any race, fight, pastime, sport, lot chance, casualty, election or unknown or contingent event whatever, or for the

reimbursing or paying any money or property knowingly lent or advanced at the time and place of such play or bet, to any person or persons so gaming or betting, or that shall, during such play or betting, so play or bet, shall be void and of no effect. [R. S. 1845, p. 263, § 1. *Merchants' Saving Loan & Trust Co.* v. *Goodrich*, 75 Ill. 554. See Ch. 98, § 75.

132. LOSSES BY GAMING.] § 132. Any person who shall, at any time or sitting, by playing at cards, dice or any other game or games, or by betting on the side or hands of such as do game, or by any wager or bet upon any race, fight, pastime, sport, lot, chance, casualty, election or unknown or contingent event whatever, lose to any person, so playing or betting, any sum of money, or other valuable thing, amounting in the whole to the sum of $10, and shall pay or deliver the same or any part thereof, the person so losing and paying or delivering the same, shall be at liberty to sue for and recover the money, goods or other valu-

able thing, so lost and paid or delivered, or any part thereof, or the full value of the same, by action of debt, replevin, assumpsit, or trover, or proceeding in chancery, from the winner thereof, with costs, in any court of competent jurisdiction. In any such action at law it shall be sufficient for the plaintiff to declare generally as in actions of debt or assumpsit for money had and received by the defendant to the plaintiff's use, or as in actions of replevin or trover upon a supposed finding and the detaining or converting the property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiff according to the form of this act, without setting forth the special matter. In case the person who shall lose such money or other thing, as aforesaid, shall not, within six months really and *bona fide*, and without covin or collusion, sue, and with effect prosecute, for such money or other thing, by him lost and paid or delivered, as aforesaid, it shall be lawful for any person to sue for, and recover treble the value of the money, goods, chattels and other things, with costs of suit, by special action on the case, against such winner aforesaid; one-half to use of the county, and the other to the person suing. *No person who accepts from another person for transmission, and transmits, either in his own name, or in the name of such other person, any order for any transaction to be made upon, or who executes any order given to him by another person on, any regular board of trade or commercial or stock exchange, shall, under any circumstances, be deemed a "winner" of any moneys lost by such other person in or through any such transactions.* [As amended by act filed June 11, 1913. In force July 1, 1913. L. 1913, p. 256. In part unconstitutional. *Miller* v. *Sincere*, 273 Ill. 194.

133. PREMISES LIABLE FOR LOSSES.] § 133. If any person shall rent or lease to another any building or premises to be used or occupied, in whole or in part, as a common gaming house, or place for persons to come together to play for money or other valuable thing, or bet upon any game or chance, or shall knowingly permit the [*373 same to be so used or occupied, such building or premises so used or occupied shall be held liable for, and may be sold to pay any judgment that may be recovered under the preceding section. Proceedings may be had to subject the same to the payment of any such judgment recovered which remains unpaid, or any part thereof, either before or after execution shall issue against the property of the person against whom such judgment shall have been recovered; and when execution shall issue against the property so leased or rented, the officer shall proceed to satisfy said execution out of the building or premises so leased or occupied as aforesaid: *Provided*, that if such building or premises belong to a minor or other person under guardianship, the guardian or conservator of such person, and his real and personal property, shall be held liable instead of such ward, and his property shall be subject to all the provisions of this section relating to the collection of said judgment.

134. INSURANCE CONTRACTS EXCEPTED.] § 134. Nothing contained in sections 131 and 132 above, shall be [so] construed as to prohibit or in any way affect any insurance made in good faith, for the security or indemnity of the party insured, and which is not otherwise prohibited by law, nor to any contract on bottomry or *respondentia*.

135. PROCEEDINGS TO VACATE GAMING CONTRACTS.] § 135. All judgments, mortgages, assurances, bonds, notes, bills, specialties, promises, covenants, agreements, and other acts, deeds, securities,

or conveyances, given, granted, drawn or executed, contrary to the provisions of this act, may be set aside and vacated by any court of equity, upon bill filed for that purpose, by the person so granting, giving, entering into, or executing the same, or by his executors or administrators, or by any creditor, heir, devisee,

purchaser or other person interested therein; or if a judgment the same may be set aside on motion of any person aforesaid, on due notice thereof given. [R. S. 1845, p. 264, § 3.

136. PROCEEDINGS NOT AFFECTED BY ASSIGNMENT OF CONTRACT.] § 136. No assignment of any bill, note, bond, covenant, agreement, judgment, mortgage or other security or conveyance as aforesaid, shall, in any manner, affect the defense of the person giving, granting, drawing, entering into or executing the same, or the remedies of any person interested therein. [R. S. 1845, p. 264, §4. See Ch. 98, § 75.

137. DISCOVERY.] § 137. In all actions or other proceedings commenced or prosecuted under the provisions of sections 126 to 135 inclusive of this division, the party shall be entitled to discovery as in other actions, and all persons shall be obliged and compelled to answer, upon oath, such bills as shall be preferred against them for discovering the sum of money or other thing so won as aforesaid. Upon the discovery and repayment of the money or other thing so to be discovered and repaid, the person who shall discover and repay the same, as aforesaid, shall be acquitted, indemnified and discharged from any other or further punishment, forfeiture or penalty which he might have incurred, by the playing for, or winning such money, or other thing, so discovered or repaid as aforesaid. [R. S. 1845, p. 264, § 5.

137a. PENALTY FOR KEEPING BUCKET-SHOP.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall be unlawful for any corporation, association, co-partnership or person to keep or cause to be kept within this State any bucket-shop, office, store or other place, wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased or to deliver the same if sold; and the keeping of all such places is hereby prohibited. And any corporation or person, whether acting individually, or as a member, or as an officer, agent or employe of any corporation, association, or co-partnership, who shall be guilty of violating this section, shall, upon conviction thereof, be fined in any sum not less than $200 and not more than $500; and any person or persons who shall be guilty of a second offense under this statute, in addition to the penalty above prescribed, shall, upon conviction be imprisoned in the county jail for the period of six months, and if a corporation, shall be liable to forfeiture of its charter. And the continuance of such establishment after first conviction shall be deemed a second offense. (1)

137b. WHAT NECESSARY TO COMMIT OFFENSE—ACCESSORY.] § 2. It shall not be necessary, in order to commit the offense defined

in section 1 of this act, that both the buyer and the seller shall agree to do any of the acts therein prohibited, but the said crime shall be complete against any corporation, association, co-partnership or person thus pretending or offering to sell, or thus pretending or offering to buy, whether the offer to sell or buy is accepted or not; and any corporation, association, co-partnership or person who shall communicate, receive, exhibit or display, in any manner, any such offer to so buy or sell, or any statements or quotations of the prices of any such property, with a view to any such transaction as aforesaid, shall be deemed an accessory, and upon conviction thereof shall be fined and punished the same as the principal, and as provided in section 1 of this act. (1)

187c. DUTY OF COMMISSION MERCHANT, ETC., TO FURNISH WRITTEN STATEMENT OF NAMES OF PARTIES.] § 3. It shall be the duty of every commission merchant, co-partnership, association, corporation or broker doing business as such to furnish, upon demand, to any customer or principal for whom such commission merchant, broker, co-partnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought, or to whom it shall have been sold, as the case may be, the time when, the place where, and the price at which the same was either bought or sold; and in case such commission merchant, broker, co-partnership, corporation or association shall refuse promptly to furnish

such statement upon reasonable demand, the fact of such refusal shall be *prima facie* evidence that such property was not sold or bought in a legitimate manner. (1)

187d. FINING OWNER OF PROPERTY—DUTY OF COURTS TO CHARGE GRAND JURIES.] § 4. Whoever knowingly permits any of the illegal acts aforesaid in his building, house, or in any out-house, booth, arbor or erection of which he has the care or possession, shall be fined not less than $500 nor more than $1,000; and any penalty so adjudged shall be a lien upon the premises on or in which such unlawful acts are carried on or permitted. It is the intention of this act to prevent, punish and prohibit, within this State, the business now engaged in and conducted in places commonly known and designated as bucket-shops, and also to include the practice now commonly known as bucket-shopping by persons, corporations, associations, or co-partnerships, who ostensibly carry on the business or occupation of commission merchants or brokers in grain, provisions, petroleum, stocks and bonds. And it shall be the duty, under this act, of all the judges of the several circuit courts in this State, and of the judges of the criminal court of Cook county, at every regular term thereof, to charge all regularly impaneled grand juries to make due investigation and report upon all violations of the provisions of this act. (1)

187e. BOOK-MAKING AND POOL-SELLING—PENALTY.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That any person who keeps any room, shed, tenement, tent, booth, or building, or any part thereof, or who occupies any place upon any public or private grounds within this State, with any book, instrument or device for the purpose of recording or registering bets or wagers, or of selling pools, or any person who records or registers bets or wagers, or sells pools

upon the result of any trial or contest of skill, speed or power of endurance of man or beast, or upon the result of any political nomination, appointment or election; or being the owner, lessee or occupant of any room, shed, tenement, tent, booth, or building, or part thereof, knowingly permits the same to be used or occupied for any of these purposes, or therein keeps, exhibits or employs any device or apparatus for the purpose of recording or registering such bets or wagers, or selling of such pools, or becomes the custodian or depository for hire or privilege, of any money, property, or thing of value staked, wagered or pledged upon any such result, shall be punishable by imprisonment in the county jail for a period not longer than one year, or by fine not exceeding $2,000 or both. *Provided, however*, that the provisions of this act shall not apply to the actual enclosure of fair or race track associations that are incorporated under the laws of this State, during the actual time of the meetings of said associations, or within twenty-four hours before any such meetings. (2)

PROHIBITS USE OF CLOCK, TAPE, SLOT OR OTHER MACHINES OR OTHER DEVICES FOR GAMBLING PURPOSES.

AN ACT to prohibit the use of clock, tape, slot or other machine or devices for gambling purposes. [Approved and in force June 21, 1895. L. 1895, p. 156; Legal News Ed., p. 117.]

187f. PROHIBITS USE OF—PENALTY.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whoever, in any room, saloon, inn, tavern, shed, booth or building or enclosure or in any part thereof operates, keeps, owns, rents or uses any clock, joker, tape or slot machine or any other device upon which money is staked or hazarded or into which money is paid or played upon chance, or upon the result of the action of which money or other valuable thing is staked, bet, hazarded, won or lost, shall upon conviction for the first offense be fined not less than one hundred (100) dollars, and for a second offense be fined not less than five hundred (500) dollars and be confined in the county jail for not less than six (6) months, and for the third offense shall be fined not less than five hundred (500) dollars and be imprisoned in the penitentiary not less than two (2) years nor more than four (4) years.

187g. DECLARED A GAMBLING DEVICE—CONFISCATION.] § 2. Every clock, tape, machine, slot machine or other machine or device for the reception of money on chance or upon the action of which money is staked, hazarded, bet, won or lost is hereby declared a gambling device and shall be subject to seizure, confiscation and destruction by any municipal or other local authority within whose jurisdiction the same may be found.

187h. PENALTY FOR HAVING IN POSSESSION.] § 3. Every owner, occupant, lessee, mortgagee or other person in possession of any premises upon which any gambling device may be located and every person in the use, operation, lease or other possession of the same shall be fined for the first offense not less than one hundred (100) dollars, and for the second offense shall be fined not less than five hundred (500) dollars and shall be confined in the county jail not less than six (6) months, and for the third offense shall be fined not less than five hundred (500) dollars and shall be imprisoned in the penitentiary not less than two (2) years nor more than four (4) years.

(1) AN ACT to suppress bucket-shops and gambling in stocks, bonds, petroleum, cotton, grain, provisions or other produce. [Ap-

proved June 6, 1887. In force July 1, 1887, L. 1887, p. 96; Legal News, Ed., p. 135.]

(2) AN ACT to prohibit book-making and pool-selling. [Approved May 31, 1887. In force July 1, 1887. L. 1887, p. 955; Legal News, Ed., p. 136.]

In 1919 the General Assembly passed an Act entitled "An Act to protect all counties in the State of Illinois in which there are United States Naval Stations, and military posts of the first class, from slot machines and other gambling devices."

Hurd's Statutes, 1919, p. 1022.

THE FOLLOWING ARE A FEW OF THE ILLINOIS GAMING DECISIONS.

Slot. Mach.	1	Alma Mfg. Co. v. Chicago, 202 App. 240.
Grain	2	Athenstadt (In re estate of), 170 App. 74.
Grain	3	Beggs v. Postal Telegraph Cable Co., 159 App. 247.
Stock	4	Bawden v. Taylor, 254 Ill. 464.
Grain	5	Bartlett v. Slusher, 215 Ill. 348.
Grain	6	Beveridge v. Hewitt, 8 App. 467.
Grain	7	Barnett v. Baxter, 64 App. 544.
Grain	8	Brown v. Alexander, 29 App. 626.
Grain	9	Brand v. Henderson, 107 Ill. 141.
Options	10	Bates v. Woods, 225 Ill. 126.
Ordinance	11	Chicago v. Lesser, 196 App. 37.
Grain	12	Cutler v. Pardridge, 182 App. 351.
Races	13	Chicago v. Stone, 187 App. 90.
Bookmaking	14	Chicago v. Osborne, 185 App. 94.
Stocks	15	Cromwell v. Davies, 163 App. 152.
Coal	16	Consolidated Coal Co. v. Jones, 232 Ill. 326.
Grain	17	Colderwood v. McCrea, 11 App. 543.
Grain	18	Cole v. Milmine, 88 Ill. 349.
Grain	19	Corbett v. Underwood, 83 Ill. 324.
Grain	20	Cothran v. Ellis, 125 Ill. 496.
Grain	21	Central Stock & Grain Ex. v. Board of Trade, 196 Ill. 396.
Grain	22	Coffman v. Young, 20 App. 76.
Grain	23	Charleston St. Bk. v. Edman, 99 App. 235.
Grain	24	Curtis v. Wright, 40 App. 491.
Grain	25	Carroll v. Holmes, 24 App. 453.
Grain	26	Commercial Nat'l Bk. v. Spaids, 8 App. 493.
Grain	27	Dunbar v. Armstrong, 115 App. 549.
Grain	28	Dillon v. McCrea, 59 App. 505.
Grain	29	Doxey v. Spaids, 8 App. 549.
Grain	30	Ebersole v. First Nat'l Bank, 36 App. 267.
Cards	31	Finkel v. Springer, 198 App. 484.
Grain	32	First Nat'l Bk. v. Miller, 235 Ill. 135.
Grain	33	Fox v. Steever, 156 Ill. 622.
Grain	34	Graff v. Moench, 201 App. 140.
Grain	35	Graff v. Moench, 181 App. 127.

Grain	36	Gardner v. Girten, 69 App. 422.
Grain	37	Garden v. Meeker, 169 Ill. 40.
Cards	38	Gaby v. Hawkins, 86 App. 529.
Grain	39	Griswold v. Gregg, 24 App. 384.
Stock	40	Hackney v. Bock, 212 App. 497.
Stock	41	Hills v. Hopp, 210 App. 365.
Note, Cards	42	Helfrick v. Scott, 184 App. 202.
R. E.	43	Harlow v. Snow, 147 App. 369.
Grain	44	Hocomb v. Kempner, 214 Ill. 458.
Grain	45	Hitchcock v. Corn Ex. Bk., 40 App. 414.
Rent—Cards	46	Harris v. McDonald, 79 App. 638.
Horse Race	47	Holland v. Swain, 94 Ill. 154.
Grain	48	Hall v. Barrett, 93 App. 642.
Grain	49	International Bk. of Vankirk, 39 App. 23.
	50	1 Ill. Cyc. Dig. 938.
Stock	51	Ill. T. & S. Bk. v. La Touche, 101 App. 341.
Stock	52	Johnson v. Milmine, 150 App. 208.
Grain	53	Jones v. Jones, 103 App. 382.
Stock	54	Jamieson v. Wallace, 167 Ill. 388.
Cards	55	Johnson v. McGregor, 157 Ill. 350.
Craps	56	Kearney v. Webb, 278 Ill. 17, rev'g 199 App. 245.
Stock	57	Kyser v. Miller, 144 App. 316.
Stock	58	Kantzler v. Bensinger, 214 Ill. 589.
R. E. Option	59	Kerting v. Hilton, 51 App. 437, aff. 152 Ill. 658.
Grain	60	Kruse v. Kennett, 181 Ill. 199.
Cards	61	Kizer v. Walden, 198 Ill. 274; 96 App. 593.
Grain	62	Kerting v. Sturtevant, 181 App. 517.
Grain	63	Lamson v. West, 201 App. 251.
Grain	64	Logan v. Musick, 81 Ill. 415.
Grain	65	Lyon v. Culbertson, 83 Ill. 33.
Cards	66	Larned v. Tiernan, 110 Ill. 173.
Grain	67	Moench v. Graff, 212 App. 42.
Horse Case	68	Murray v. Burgess, 204 App. 482.
Grain	69	Miller v. Sincere, 273 Ill. 194.
Grain	70	Miles v. Andrews, 40 App. 155; 153 Ill. 262.
Grain	71	McCormick v. Nichols, 19 App. 334.
Coal	72	Minnesota Lumber Co. v. Whitebrast, 160 Ill. 85.
Grain	73	Merchants Loan & Trust Co. v. Lamson, 90 App. 18.
Grain	74	Miller v. Bensley & Wagner, 20 App. 529.
Cards	75	McAlister v. Oberne, H. & Co., 42 Ill. App. 287.
Grain	76	Nash-Wright Co. v. Wright, 156 App. 243.
Stock	77	Osgood v. Skinner, 211 Ill. 229.
Cards	78	Porter v. First Nat'l Bk., 212 App. 250.
Cards	79	People v. Viskniski, 169 App. 230.
Stocks	80	Pelouze v. Slaughter, 241 Ill. 215.
Cards	81	Pierce v. Shay, 145 App. 612. (See 12 Ill. Cyc. Dig. 1303.)
Grain	82	Pratt & Co. v. Ashmore, 224 Ill. 587.
Grain	83	Pixley v. Boynton, 79 Ill. 351.
Grain	84	Pickering v. Cease, 79 Ill. 328.
Grain	85	Pardridge v. Cutler, 168 Ill. 504.
Grain	86	Pearce v. Foote, 113 Ill. 228.

Grain	87	Pope v. Hanke, 155 Ill. 617.
Cards	88	Patterson v. Scott, 33 App. 348; 142 Ill. 138.
Grain	89	Riley v. Lamson, 164 App. 298.
Grain	90	Riebe v. Hellman, 69 App. 19.
Stock	91	Stewart v. Dodson, 281 Ill. 192—Rev'g 205-346.
Milk	92	Schmidt v. Marine Com. Co., 197 App. 279.
	93	Schultz v. Miller-Hamilton, 189 App. 396.
Cards	94	Sherfy v. Lachenmyer, 190 App. 443.
Loan	96	Scott v. Baker, 143 Ill. App. 15.
Grain	97	Staninger v. Tabor, 103 App. 330.
Grain	98	Semler Milling Co. v. Fyffe, 127 App. 514.
Grain	99	Schlee v. Guckenheimer, 179 Ill. 593.
Grain	100	Sanborn v. Benedict, 78 Ill. 309.
Stock	101	Skinner v. Osgood, 186 Ill. 491.
Instruction	102	Suttle v. Finnigan, 86 App. 423.
	104	Stichtenoth v. Cent. S. & G. Ex. 99 Fed. 4.
Bookmaking	105	Thomas v. First Nat'l Bk. 213 Ill. 261.
Grain	106	Tenney v. Foote, 4 App. 594.
Stock	107	Ubben v. Binnian, 182 Ill. 508.
Cards	108	Vennum v. Car, 130 App. 309.
Grain	109	Ware v. Dumont, 123 App. 1.
Bucketshop	110	Weare Commission Co. v. People, 209 Ill. 528.
Grain	111	Warren v. Scanlan, 59 App. 138.
Grain	112	Webster v. Sturgis, 7 App. 560.
Cards	113	Wing v. Little, 163 App. 468.
Grain	114	Wolcott v. Heath, 78 Ill. 433.
Grain	115	Walker v. Johnson, 59 App. 448.
Corner	116	Wright v. Cudahy, 168 Ill. 86.
Grain	117	Watt v. Costello, 40 App. 307.
Grain	118	Wheeler v. McDermid, 36 App. 179.
Stock	119	Woolsey v. Neely, 62 App. 141.
Grain	120	Ware v. Jordon, 25 App. 534.
Fair Pre'm	121	West v. Carter, 129 Ill. 249.
Grain	122	Wayne v. Wagner, 190 App. 1.
Cards	123	Wing v. Little, 267 Ill. 20, rev'g 184-261.
Physician	124	Ziegler v. Ill. Trust & Sav. Bk., 245 Ill. 180.
Cards	125	Zellers v. White, 208 Ill. 518.

Cases numbered 47, 55, 60, 61, 66, 69, 75, 97 and 104 were cases to recover the penalty of treble the amount lost by another in gambling.

Also see Ill. Stats. Anno., Vol. 2, p. 2070, Sec. 132, Ill. Crim. Code, for losses recoverable at gaming.

Also, 33 A. & E. Anno. cas. 1081. Note.

Also, Ill. Cyc. Dig., Vol. 1, p. 938.

"Recovery back of money lost and recovery by principal of money lost by agent."

Also, Vol. 5, p. 260, "gambling contracts."

ANNOTATIONS, CASE NOTES, AND OTHER REFERENCES.

Gambling in Illinois by George D. Smith, Ill. Law Review, May, 1921.

Conflict of laws as to gambling contracts, 46 L. R. A. (n. s.) 650, Note.

Defenses to Notes and other obligations given for gambling debts, 119 Am. St. 172-181.

Contracts for sale of personal property to be delivered in the future, 1 Am. St. Rep. 752-766.

Admissibility of evidence of other transactions, 34 A. & E. Anno. cas. 87.

Admissibility of parol evidence to show the illegality of a gambling contract, 16 A. & E. Anno. cas. 389.

As to the illegality of a gambling contract, when one party only intends delivery, 11 A. & E. Anno. cas. 440.

The right to refuse payment of a draft, the proceeds of which are used in an illegal transaction, 39 L. R. A. (n. s.) 1005.

Validity and application of statutes prohibiting all "futures" or dealings on margin, 56 Cent. L. J. 233.

The law of gambling contracts—leading article, 47 Cent. L. J. 169.

Right of broker to recover commissions and advances made in furthering wagering contracts, 11 L. R. A. (n. s.) 575, Note.

"Account Stated." When any part of consideration illegal, See 156 Ill. App. 244.

What constitutes "Account Stated," 27 L. R. A. 811-826; between broker and customer, 821.
See McNeil Ill. Evidence, "Account Stated."

A party's books of account as evidence in his own favor, 52 L. R. A. 545-611, Note.

Books of account not admissible to prove a mater collateral to the issue of debit and credit. 15 Ill. App. 544.

What is provable by books of account, 52 L. R. A. 689-723, n.

Compulsary production of books. See 242 Ill. 584.

A party's books of account as evidence in his own favor, 52 L. R. A. 545, 610, n.

Subpoena *Duces Tecum*, 128 Am. St. 755-779.
Must describe documents, 22 Enc. Pl. & Pr. 1334.

What may be shown by cross examination of a broker when he is suing to recover commissions and advances, 101 Ill. 117.

Circumstantial evidence, Enc. Evidence, Vol. 3.

The line between legal and illegal grain future transactions. See Whiteside v. Hunt, 97 Ind. 191.

Custom or usage of Board of Trade, 4 Ill. App. 63.
See the difference between "time contracts" (futures) and "options," explained in 78 Ill. 433.

Wagering contracts covering dealings in grain, flour, merchandise, cotton and stocks, 98 C. C. A. 368, note.

In Missouri, dealings in futures are void when only one of the parties intends to wager. See 118 C. C. A. 542.

Keeping a gaming house is punishable by the City and also by the State for the same offense. Haskins v. People, 106 Ill. 628.

Option dealing in grain was held to be gaming, 181 Ill. 199.

Power of State Legislature to enact *prima facie* rule of evidence for criminal causes, L. R. A. 1915, C. 717.

Gambling upon the Stock Exchange, 29 Chicago Legal News, 65, referring to the gambling act of England and the leading English case.

One whose money has been taken by an agent without authority and deposited as margin in future gambling transactions may recover it in equity from the broker.

Page Contracts, Sec. 520.

109 Fed. 926.

48 C. C. A. 726.

56 L. R. A. 875.

88 Fed. 868.

Contracts for sales on margins, 23 Am. St. 487. Note.

Stockbroker and client, legal relation, 75 Am. Dec. 313-336, 18 Am. St. 291. Note.

Dealing in futures, annotated case, Am. L. Reg. (n. s.), 33, 436.

Gambling in future prices of grain, 17 Cent. L. J. 361.

In grain & stocks, Am. L. Rev. 18, 1049.

Bucket shops, annotated case, 17 Fed. 830.

Right of wife to recover money lost by husband in gambling, A. & E. Anno. cases, 1914, C. 1081, Note.

Estopped to contest commercial paper by representations to prospective purchasers. 50 L. R. A. (n. s.), 1023, 144 Ill. App. 316, 154 Ill. App. 104.

Equitable relief against gambling contracts, 1 A. & E. Anno. cas. 154, Note.

Evidence of intention, 11 A. & E. Anno. cas. 441, n.

Who is a common gambler? A. & E. Anno. cas. 1913, A. 773.

Bookkeeper cannot testify to amounts of profits or losses. He can only testify to footings. 209 Ill. 376.

Inference as to the character of the transactions arising from the fact that they were on "margin," 22 L. R. A. (n. s.), 174.

"Scalping" is gambling, 19 Ill. App. 334.

Implied contract of principal to pay to broker any loss he may sustain on contracts made by his direction, 126 Ill. 202.

Premises of landlord liable for judgment, 184 Ill. App. 261.

Gaming contracts governed by *Lex Loci Contractus*, not by *Lex Fori*, 58 U. Pa. L. Rev. 91-95.

Money loaned for gaming is often held not recoverable, 117 Am. St. 506 N. See 114 Pa. St. 422.

Gaming houses are public nuisances, 15 Ill. 589.

Chicago ordinance against keeping a gambling house, Chap 30, Chicago Code, 1911. This is in addition to the State Law and the penalty for keeping a bucket shop.

Gambling in grain and stocks, 18 Am. L. Rev. 1049.

Gambling and cognate vices (*Dos Passos*), 14 Yale Law Journal 9.

Bibliography on Securities and Stock Exchanges, by Professor S. S. Huebner, U. of Pa. The annuals of the American Academy of Political and Social Science, Phil., Pa., May, 1910, Vol.

35, No. 3. This shows the general works, the leading legal treatises, leading court cases, leading magazine articles, leading manuals, handbooks, dictionaries, directories, constitutions of exchanges, etc.

"Speculation on the Stock and Produce Exchanges of the U. S." by Henry Crosby Emery, Ph. D., Columbia University.

"The Clearing House in the Grain and Stock Exchange," by Merritt Starr, 20 Am. L. Rev. 680.

The "Law of the Grain Exchange," by Thomas Dent, Ill. St. Bar Ass'n., Rep. Vol. 6, 1883.